

**DATED**

**11 July 2013**

**(1) LEEDS CITY COUNCIL**

**and**

**(2) SUSTAINABLE COMMUNITIES FOR LEEDS LIMITED**

**PROJECT AGREEMENT**

relating  
to the Little London and Beeston Hill  
and Holbeck HRA Social Housing  
PFI Project

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**BETWEEN**

- (1) **LEEDS CITY COUNCIL** of Civic Hall, Leeds LS1 1UR ("**City Council**"); and
- (2) **SUSTAINABLE COMMUNITIES FOR LEEDS LIMITED** (company registered number 08320624) whose registered office is c/o K&L Gates LLP, One New Change, London, EC4M 9AF ("**Contractor**").

**BACKGROUND**

- A. By virtue of section 1 of the Housing Act 1985 ("**1985 Act**") the City Council is designated as a local housing authority.
- B. By virtue of section 9(1) and section 9(2) of the 1985 Act the City Council 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 City Council 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. By virtue of section 13(1) of the 1985 Act, the City Council may lay out and construct public streets or roads and open spaces on land acquired by them for the purposes of Part II (Provision of Housing Accommodation) of the 1985 Act.
- 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 City Council.
- E. The City Council is empowered to procure the demolition, construction and refurbishment of the Properties and the provision of associated services pursuant to Section 1 of the Local Government (Contracts) Act 1997 and section 111 of the Local Government Act 1972.

- F. In accordance with the United Kingdom Government's Private Finance Initiative by an advertisement dated 20 July 2007 and referenced 2007/S140-173257 in the Official Journal of the European Communities the City Council sought bids from appropriately qualified contractors for the demolition, construction and refurbishment and the management and maintenance of the Properties.
- G. Through a competitive tender process the Contractor has indicated its willingness, and has been selected by the City Council, to demolish, construct and refurbish the Properties and to manage and maintain the Properties and Project Sites in accordance with the terms and conditions of this Agreement.
- H. 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.
- I. 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 13 (*City Council's Policies*).
- J. The Contractor consents to the issue of a certificate under section 3 of the Local Government (Contracts) Act 1997.
- K. The City Council is a Best Value Authority under the Local Government Act 1999 and the functions in respect of which the City Council wishes to procure the management and maintenance of the Properties are Best Value functions.

## **PART 1 - PRELIMINARY**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

The provisions of schedule 1 (*Definitions*) shall apply and have effect in relation to the words and expressions used in this Agreement.

## 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 annex or protocol is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital, appendix or protocol of and to this Agreement;
- 1.2.4 save where otherwise provided in this Agreement, any reference to this Agreement or to any other document 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;
- 1.2.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words; and



1.2.9 references to a document being "in the Agreed Form" is reference to the form of document agreed between the parties and for the purpose 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 the price base date (1st April 2010) multiplied by:

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

where I1 is the value of RPIX most recently published prior to the relevant calculation date, and I2 is the value of RPIX on the price base date for the Project (1st April 2010).

### 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 schedule 2 (*Output Specification*)

1.5.3 schedule 5 (*Payment Mechanism*);

1.5.4 the Schedules, Annexes and Appendices (excluding schedule 2 (*Output Specification*), schedule 5 (*Payment Mechanism*) and schedule 3 (*Contractor's Proposals*)); and

1.5.5 schedule 3 (*Contractor's Proposals*).

## 1.6 **Approval by the City Council**

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

## 1.7 **Responsibility for Related Parties**

The Contractor shall be responsible as against the City Council for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor and the City Council shall be responsible as against the Contractor for the acts and omissions of the City Council Related Parties as if they were the acts and omissions of the City Council. The Contractor shall, as between itself and the City Council, 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 City Council, 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 except clause 30.1 (*Contractor to Become an Admission Body*), 30.8 (*Contractor Ceases to be an Admission Body*), 30.9 (*Contractor Scheme*) and 30.10 (*Undertaking from the Contractor*) which shall be enforceable by the Transferring Employees and by the Transferring Original Employees and clause 76.7.6 (*Information Provision*) which shall be enforceable by HM Treasury.

## **3. COMMENCEMENT AND DURATION**

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

3.2 The Service Period will commence on the Initial Services Commencement Date (Refurbishment) 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; and
  - 4.1.2 the Responsive Repairs and Cyclical Maintenance and Renewal Contract with the Responsive Repairs and Cyclical Maintenance and Renewal Contractor;
- 4.2 on or before the date of this Agreement deliver to the City Council the Collateral Warranties from the Building Contractor, the Principal Building Sub-Contractor(s), the members of the Professional Team and the Responsive Repair and Cyclical Maintenance and Renewal Contractor;
- 4.3 not engage any new Building Contractor, Principal Building Sub-Contractor(s) or Responsive Repairs and Cyclical Maintenance and Renewal Contractor or any new member of the Professional Team in connection with the Works and/or Services unless such person has delivered to the City Council 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 City Council before such entity enters onto any Project Site, Dwelling or Property.

#### **5. GENERAL WARRANTIES AND INDEMNITIES**

##### **5.1 Contractor Warranties**

The Contractor warrants and represents to the City Council that:

- 5.1.1 on the date hereof it is properly constituted and incorporated under the laws of England and Wales and has the corporate

power to own its assets and to carry on its business as it is now being conducted;

- 5.1.2 on the date hereof it has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents;
- 5.1.3 on the date hereof all necessary action to authorise the execution of and the performance of its obligations under this Agreement, the Project Documents and the Financing Agreements has been taken or, in the case of any Project Document or Financing Agreement executed after the date of this Agreement, will be taken before such execution;
- 5.1.4 on the date hereof the obligations expressed to be assumed by the Contractor under this Agreement, the Project Documents and the Financing Agreements are, or in the case of any Project Document or Financing Agreement executed after the date of this Agreement will be, legal, valid, binding and enforceable to the extent permitted by law and this Agreement, each Project Document and each Financing Agreement is or will be in the proper form for enforcement in England;
- 5.1.5 it will procure that each and every one of the New Build Properties 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 City Council from time to time;
- 5.1.6 on the date hereof the execution, delivery and performance by it of this Agreement, the Project Documents and the Financing Agreements does not contravene any provision of:

- 5.1.6.1 any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
- 5.1.6.2 the Memorandum and Articles of Association of the Contractor;
- 5.1.6.3 any order or decree of any court or arbitrator which is binding on the Contractor; and/or
- 5.1.6.4 any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 5.1.7 on the date hereof the information, representation and other matters of fact committed in writing to the City Council 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;
- 5.1.8 on the date hereof the Contractor Warranted Data is true and accurate in all respects;
- 5.1.9 on the date hereof 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);
- 5.1.10 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 this Agreement, any Project Document or any Financing Agreement;

- 5.1.11 on the date hereof 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 this Agreement, any Project Document or any Financing Agreement;
- 5.1.12 on the date hereof 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;
- 5.1.13 on the date hereof 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; and
- 5.1.14 on the date hereof the copies of the Project Documents and the Financing Agreements which the Contractor has delivered or, when executed, will deliver to the City Council 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 or the Financing Agreements which would materially affect the interpretation or application of any of the Project Documents,

and the City Council relies upon such warranties and representations.

## 5.2 **Contractor Undertakings**

The Contractor undertakes with the City Council 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) Working Days of becoming aware the same may be threatened or pending or with twenty (20) Working Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a Sub-Contractor) give the City Council 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 City Council (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 City Council (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 City Council (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 this Agreement, the Project Documents and/or the 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. **CITY COUNCIL WARRANTIES**

### 6.1 **No Warranty by City Council**

Subject to clauses 6.3 (*Fraudulent Statements*), 6.4 (*City Council's Title Warranty*) and 6.5 (*City Council Warranted Data*) and without prejudice to the City Council's warranty set out in schedule 28 (*Title Matters*), the City Council 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 clauses 6.3 (*Fraudulent Statements*), 6.4 (*City Council's Title Warranty*), 6.5 (*City Council Warranted Data*) and the City Council's warranty set out in schedule 28 (*Title Matters*), neither the City Council nor any of its agents, employees or advisers 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 (*City Council Warranties*) shall exclude any liability which the City Council or any of its agents, employees or advisers would otherwise have to the Contractor in respect of any statements made fraudulently prior to the date of this Agreement.

## 6.4 **City Council's Title Warranty**

- 6.4.1 In respect of each New Build Site, and Environmental Works Area the City Council warrants to the Contractor on terms set out in part 1 of schedule 28 (*Title Matters*), provided that no inaccuracies or omissions in such information shall be capable of giving rise to a City Council Default.
- 6.4.2 In respect of Refurbishment Dwellings and related Common Parts the City Council warrants that there are no Adverse Rights save for the Leaseholder's Leases, Tenancy Agreements and all Disclosed Matters.

## **6.5 City Council Warranted Data**

The City Council warrants to the Contractor that the Housing Information set out or described in part 1 of schedule 10 (*Warranted Data*) has been prepared after due and careful enquiry and is reasonably believed to be true, accurate and complete as at the date of this Agreement.

## **6.6 Contractor's Due Diligence**

The Contractor shall, subject to the terms of this Agreement, be deemed to have 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 gathered all information necessary to perform its obligations under this Agreement and other obligations assumed.

## **6.7 No Relief**

Subject to clause 6.3 (*Fraudulent Statements*), clause 6.4 (*City Council's Title Warranty*), clause 6.5 (*City Council Warranted Data*) and the City Council's warranty set out in schedule 28 (*Title Matters*), the Contractor shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the City Council on grounds that any information, whether obtained from the City Council or otherwise (including information made available by or on behalf of the City Council), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

## **6.8 Structure Survey**

On or before the Commencement Date, the City Council shall procure a collateral warranty from the Structural Surveyor in respect of the Structural Survey Appointment for the benefit of the Contractor, in the form set out in the Structural Survey Appointment.

## 6.9 Japanese Knotweed

- 6.9.1 Subject to clause 6.9.2 and 6.9.7, the Contractor will be responsible for the discovery and treatment of any growth or regrowth of Japanese Knotweed within the Project Sites (including for the avoidance of doubt within the curtilage of Dwellings within such Projects Sites).
- 6.9.2 Notwithstanding anything in clause 18 (*The Project Sites*), and subject to clauses 6.9.4 and 6.9.5, the City Council shall be responsible for the eradication of Japanese Knotweed, and treating any regrowth of Japanese Knotweed, in the Japanese Knotweed Infestation Areas on and from the Commencement Date until the date specified in the Japanese Knotweed Treatment Programme relevant to such area and to the extent that such areas are exclusively licenced to the Contractor pursuant to clause 8.1 (*Licence*) or otherwise the Contractor shall ensure that the City Council has all reasonably necessary access to the Japanese Knotweed Infestation Areas in order to comply with the obligations pursuant to this clause 6.9.2.
- 6.9.3 The City Council shall carry out such works, or procure the carrying out of such works to comply with the City Council's obligation in clause 6.9.2 and 6.9.7, in accordance with the guidelines contained in the Knotweed Code of Practice published by the Environment Agency, and Good Industry Practice, and in accordance with the Japanese Knotweed Treatment Programme.
- 6.9.4 The Contractor may, at its sole discretion, by written notice to the City Council, notify the City Council of any part of the Japanese Knotweed Infestation Areas, for which the Contractor will take responsibility ("**Transitional Japanese Knotweed Sites**").

6.9.5 If the Contractor notifies the City Council of Transitional Japanese Knotweed Sites in accordance with clause 6.9.4:

6.9.5.1 the City Council shall cease carrying out any works that the City Council is carrying out pursuant to clause 6.9.2, and the City Council shall grant any necessary licence to the Contractor, in accordance with clause 8.1, to permit the Contractor to take responsibility for the Transitional Japanese Knotweed Sites;

6.9.5.2 provided that the City Council has fully complied with the City Council's obligations in clause 6.9.2, any Japanese Knotweed occurring or reoccurring within the Transitional Japanese Knotweed Sites shall, on and from the date that the Contractor takes responsibility for such Transitional Japanese Knotweed Sites, be the Contractor's responsibility, and the Contractor shall be responsible for such Transitional Japanese Knotweed Sites; and

6.9.5.3 on and from the date that the Contractor takes responsibility for the Transitional Japanese Knotweed Site referred to in clause 6.9.5.2, such Transitional Japanese Knotweed Site shall cease to be a Japanese Knotweed Infestation Area.

6.9.6 Notwithstanding anything in clause 18 (*The Project Sites*) of this Agreement, if after the Commencement Date but on or before the date which is ten (10) years after the date that the City Council completes treatment of the Japanese Knotweed in the relevant Japanese Knotweed Infestation Area, there is any new growth or regrowth of Japanese Knotweed within the Japanese Knotweed Infestation Areas, identified by regular

inspection by the Contractor or otherwise, the Contractor shall immediately notify the City Council of such growth or regrowth.

6.9.7 If the Contractor notifies the City Council in accordance with clause 6.9.6, then the City Council shall treat, or procure the treatment, of such Japanese Knotweed to the standard set out in clause 6.9.3, so that such treatment does not adversely affect the Contractor in carrying out the Works or Services.

6.9.8 The Contractor shall inform the City Council immediately of any infestation of Japanese Knotweed that it identifies in any area adjacent to the Project Site or within the curtilage of any adjacent third party dwellings or properties.

#### 6.10 **Stopping Up Orders**

6.10.1 The Contractor shall apply for, or warrants to the City Council that it has applied for, each of the required Stopping-Up Orders detailed to in columns 1 to 5 of Part 1 of schedule 29 (*Planning Risks*) in a timely and diligent manner and in accordance with Good Industry Practice such that the relevant Stopping Up Order shall be obtained by the start on site date set out in column 6 of Part 1 of schedule 29 (*Planning Risks*).

6.10.2 Notwithstanding clause 18.5 (*Consents and Planning Approval*), if a Consent that the Contractor is required to obtain pursuant to clause 18.5 is a Stopping Up Order referred to in Part 1 of schedule 29 (*Planning Risks*) and the Contractor has failed to obtain such Stopping Up Order by the date set out in column 8 of Part 1 of schedule 29 (*Planning Risks*) then the City Council shall issue a City Council Change to deal with such failure provided that:

6.10.2.1 the failure of the Contractor to obtain such Stopping Up Order is not due to an act or omission of the

Contractor or a failure by, the Contractor to comply with its obligations under this Agreement;

6.10.2.2 the Contractor has demonstrated to the City Council's reasonable satisfaction that it has complied with its duty to mitigate set out in clause 6.10.3 below;

6.10.2.3 the Contractor has notified the City Council as soon as it is aware (acting reasonably) that any such Stopping Up Order will not be, or is not likely to be, obtained on or before the start on site date set out in column 6 of Part 1 of schedule 29 (*Planning Risks*).

6.10.3 The Contractor shall at all times take all reasonable steps to mitigate:

6.10.3.1 the risk of a failure to obtain a Stopping-Up Order; and

6.10.3.2 the impact of a failure to obtain a Stopping-Up Order;

6.10.3.3 and such mitigation shall be limited to:

(a) prior consultation and engagement with local residents, stakeholder interests and the Local Highways Authority;

(b) seeking to have withdrawn any objections to a Stopping-Up Order (including without limitation by negotiation with the party who has raised the objection);

- (c) proceeding in a diligent and timely manner in respect of the applications for, and any inquiries into, the Stopping-Up Orders;
- (d) revising the Construction Programme pursuant to the Review Procedure or a Contractor Change;
- (e) providing timely notice in accordance with clause 6.10.2.3 above.

6.10.4 Where either Party has proposed a Change pursuant to clauses 6.10.2 or 6.10.3.3(d) (as relevant) or otherwise to deal with any such failure to obtain Stopping-Up Orders, in negotiating such Change, the parties shall consider such matters which shall achieve the alternative contingency solution set out in column 7 (*sc4I risk mitigation design option*) of Part 1 of schedule 29 (*Planning Risks*). For the avoidance of doubt, the parties may propose other solutions through a Change not so specified and may propose a Change at any time. Such Change shall:

6.10.4.1 provide for any necessary amendments to the Output Specification necessary to give effect to the Change; and

6.10.4.2 provide for any amendments to the Construction Programme, any relevant Milestones, and provisions of this Agreement, necessary to give effect to the matters identified in the column 10 (*Fin & Delivery Impact*) of Part 1 of schedule 29 (*Planning Risks*) in respect of such Consent; and



- 6.10.4.3 be issued by the City Council on or before the relevant date set out in the Construction Programme.
- 6.10.5 Where the alternative contingency solution set out in column 7 (*sc4I risk mitigation design option*) of Part 1 of schedule 29 (*Planning Risks*) being implemented pursuant to a Change, the Estimated Change in Project Costs shall not exceed the amount set out in column 12 (*Cost Impact*) of Part 1 of schedule 29 (*Planning Risks*) unless the Contractor can justify to the City Council's reasonable satisfaction any increase in such costs. The City Council and the Contractor agree that in calculating the Estimated Change in Project Costs, where such costs are redesign costs or planning application costs, then such costs shall be borne equally between the Contractor and the City Council.
- 6.10.6 For the purpose of this clause 6.10, if the Contractor wishes to amend the Construction Programme, the Contractor shall notify the City Council of the Contractor's proposed amendment.
- 6.10.7 If the Contractor's proposal pursuant to clause 6.10.6, involves the reprogramming of works such that the Contractor would not be entitled to a City Council Change in accordance with this clause 6.10, but for such reprogramming, then the City Council may notify the Contractor that the City Council does not approve of such reprogramming of the works.
- 6.10.8 If the City Council notifies the Contractor in accordance with clause 6.10.7, the Contractor may either elect to not reprogramme such works, or reprogramme such works at the Contractor's own risk.

6.10.9 If the Contractor elects to reprogramme such works at the Contractor's own risk, the Contractor agrees that the Contractor will not be entitled to such Change occasioned by such reprogramming.

#### **6.11 Stopping-Up Judicial Proceedings**

6.11.1 Either party shall notify the other forthwith upon becoming aware of any Stopping-Up Judicial Proceedings in relation to any of the Project Sites.

6.11.2 The City Council shall be entitled to suspend the Works that are the subject of the Stopping-Up Judicial Proceedings forthwith upon becoming aware of any Stopping-Up Judicial Proceedings until such time as:

6.11.2.1 such Stopping-Up Judicial Proceedings are finally dismissed;

6.11.2.2 this Agreement is varied by means of a City Council Change in accordance with clause 6.10 (*Stopping-Up Orders*) in order to permit the Contractor to resume the Works; or

6.11.2.3 the parties otherwise agree that the relevant Works shall be resumed.

6.11.3 The Contractor shall be entitled to suspend the Works that are the subject of the Stopping-Up Judicial Proceedings if required to do so by a Relevant Authority as a result of any Stopping-Up Judicial Proceedings until such time as:

6.11.3.1 such Stopping-Up Judicial Proceedings are finally dismissed;

6.11.3.2 this Agreement is varied by means of a City Council Change in accordance with clause 6.10 (*Stopping-Up Orders*) in order to permit the Contractor to resume the Works; or

6.11.3.3 the parties otherwise agree that the relevant Works shall be resumed.

6.11.4 Any suspension of the Works pursuant to either clause 6.11.2 or 6.11.3 and its consequences shall be treated as if the Stopping-Up Order was not obtained and the provisions on clauses 6.10.2 to 6.10.5 (inclusive) shall apply.

## **7. DOCUMENTS AND CO-OPERATION**

### **7.1 City Council Obligations**

The City Council 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 City Council, its Tenants and Leaseholders and the Contractor and any other operations or activities carried out by the City Council on or at the Project Sites, Dwellings or Properties for the purposes contemplated by this Agreement or any other of the City Council'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 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.

## PART 2 - LAND ISSUES

### 8. NATURE OF LAND INTERESTS

#### 8.1 Licence

8.1.1 The City Council grants to the Contractor and every Contractor Related Party (where appropriate with vehicles, plant and equipment) licences to enter and remain on the Project Sites as specified in the remainder of this clause 8.1 for the purpose of carrying out the Works and the Services under this Agreement.

8.1.2 The licences referred to in clause 8.1.1 shall be:

8.1.2.1 licences in common with:

- (a) the City Council;
- (b) City Council Related Parties; and
- (c) (for the purposes of clauses 8.1.2.2(a) and 8.1.2.2(b)) Tenants,

and any parties authorised by any of them,

8.1.2.2 licences to occupy in respect of:

- (a) any Properties required for the purposes of carrying out the Services which shall commence on the Services Commencement Date for such Property and end on the Expiry Date (or Termination Date if earlier);
- (b) each of the Refurbishment Sites required for the purposes of carrying out the Refurbishment Works which shall commence on Initial Services Commencement Date

(Refurbishment) and end on the Expiry Date (or Termination Date if earlier);

- (c) each of the Demolition Sites within the red line boundary on the relevant Licence Plans. Such licences shall commence on the relevant licence start date specified for that Demolition Site in part 1 (*Demolition Sites*) to schedule 30 (*Licences*), and shall end on the date on which the Certificate of Completion (Demolition Works) is issued for that Demolition Site;
- (d) each of the New Build Sites (or part thereof) within the red line boundary on the relevant Licence Plan. Such licences shall commence on the relevant licence start date specified for that New Build Site (or part thereof) in part 2 (*New Build Sites*) to schedule 30 (*Licences*), and shall end on the date on which the Certificate of Availability is issued for that New Build Site (or part thereof) except that if a New Build Site is also a Demolition Site, then such licence in common to occupy shall not be granted to the Contractor until after Certificate of Completion (Demolition Works) has been granted in relation to that New Build Site; and
- (e) each of the Environmental Works Areas within the red line boundary on the relevant Licence Plan for the purposes of carrying out the Environmental Works which shall commence on the licence start date specified for that Environmental Works Area in part 3 (*Environmental Works Areas*) to schedule 30

(*Licences*) and end on the date on which the Certificate of Completion (Environmental Works and Communal Works) is issued for that Environmental Works Area, and

8.1.2.3 granted in accordance with and subject to the City Council's Protocols.

8.1.3 The Contractor will pay to the City Council a licence fee in the sum of one pound (£1) sterling exclusive of VAT receipt of which the City Council hereby acknowledges for the use and occupation of the Project Sites.

8.1.4 In exercising its rights under such licence the Contractor shall take all reasonable steps to minimise any damage, inconvenience, disruption and/or disturbance to the City Council and/or its Tenants and/or to the owners, users and/or occupiers of any Adjoining Property and shall make good any damage caused and indemnify the City Council in respect of all Losses arising from the exercise of such rights in accordance with clause 58.1 (*Contractor's Indemnity*).

8.1.5 The licences granted by this clause 8.1 (*Licence*) shall be subject to:

8.1.5.1 the statutory rights of any Relevant Authority or third party to have access to the Project Sites;

8.1.5.2 the right of the City Council and those authorised by it to have access to the Project Sites, Dwellings and/or Properties in accordance with this Agreement;

8.1.5.3 the rights granted under the Tenancy Agreements;

8.1.5.4 the Disclosed Matters listed in schedule 28 (*Title Matters*).

8.1.6 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 (*Licence*) 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 (*Licence*) (or part thereof if the Agreement so provides) shall determine.

## 8.4 Wayleaves

8.4.1 The City Council grants to the Contractor so far as the City Council has power to grant the same 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 Properties for the purposes only of the Project.

8.4.2 Where the Works would be impeded by an electricity sub-station the Contractor shall be responsible for negotiating the relocation of the electricity sub-station, and the terms of any documentation with the relevant electricity provider, and the City Council shall provide reasonable assistance in relation thereto. In particular the City Council shall, if requested by the Contractor:

8.4.2.1 where the electricity sub-station lease contains a provision for the City Council to terminate such lease early for reasons of redevelopment:

- (a) give such notice as may be required by the lease to terminate the term thereby created; and
- (b) comply with any conditions (precedent, subsequent or otherwise) relating to the giving of such notice; and
- (c) grant to the relevant electricity provider a lease of an alternative site identified by the Contractor and/or relevant electricity provider within the Project Sites for use as an electricity substation together with all necessary ancillary rights upon such terms as the lease may require; or



8.4.2.2 where the electricity sub-station lease does not contain a provision for the City Council to terminate the lease early for reasons of redevelopment:

- (a) accept a surrender of the lease; and
- (b) comply with any reasonable conditions (precedent, subsequent or otherwise) relating to such surrender required by the relevant electricity provider; and
- (c) grant to the relevant electricity provider a lease of an alternative site identified by the Contractor and/or relevant electricity provider within the Project Sites for use as an electricity substation together with all necessary ancillary rights upon such terms as the relevant electricity provider reasonably requires;

provided that:

8.4.2.3 the Contractor shall be liable to the City Council for any reasonable and proper costs incurred by the City Council, and reasonably agreed in advance between the City Council and the Contractor, in entering into such documentation or complying with such conditions;

8.4.2.4 subject to clause 8.4.3, the Contractor shall be responsible for the payment of all reasonable relocation costs required by the lease or the electricity provider (as the case may be);

8.4.2.5 any documentation that the City Council is required to enter into shall contain no unusual or onerous terms; and

- 8.4.2.6 the location of any alternative site identified by the Contractor and/or relevant electricity provider under clause 8.4.2 shall be subject to approval of the City Council, such approval not to be unreasonably withheld or delayed;
  - 8.4.2.7 without prejudice to clause 8.4.2.6, responsibility for the cost and provision of any land for the purposes of a replacement electricity sub-station shall be dealt with in accordance with clause 8.4.3; and
  - 8.4.2.8 the City Council shall complete and approve documentation that the Contractor agrees pursuant to, and in accordance with, this clause 8.4.2 as soon as reasonably practicable, and no later than twenty (20) Working Days, following finalisation of such documentation by the Contractor.
- 8.4.3 Notwithstanding clause 8.4.2.4:
- 8.4.3.1 the Contractor shall use all reasonable endeavours to agree for the sub-station to be relocated onto an area within the Project Sites;
  - 8.4.3.2 if, despite the Contractor using all its reasonable endeavours, Northern Powergrid will not agree for the sub-station to be relocated onto an area within the Project Sites; and
  - 8.4.3.3 the area required by Northern Powergrid for the relocation of the sub-station is either on land owned by the City Council or a third party then, subject to clause 8.4.2.6:
    - (a) if the area for the relocation of the sub-station is on land owned by the City Council (in its

capacity as housing authority), the City Council shall, if the City Council is legally permitted to do so, grant such lease to the relevant electricity provider sufficient to give effect to the relocation of the sub-station, at the Contractor's cost, subject to any statutory requirements that apply to the grant of such lease by the City Council; or

(b) if the area for the relocation of the sub-station is:

(i) on land owned by a third party;

(ii) on land owned by the City Council (in its capacity as housing authority) and if the City Council is not legally permitted to grant a lease to the relevant electricity provider; or

(iii) on land owned by the City Council in a capacity other than housing authority,

then the City Council shall use reasonable endeavours (with the assistance of the Contractor), to procure the use of such part of the area as is necessary for the relocation of the sub-station, with the City Council bearing the reasonable and proper costs incurred.

## 8.5 Compliance with Disclosed Matters

8.5.1 In respect of each New Build Site and Environmental Works Area the Contractor hereby acknowledges and agrees that it has been provided with copies of all the Disclosed Matters listed in schedule 28 (*Title Matters*) and that all such matters

that are disclosed within the Disclosed Matters are disclosed against the warranties set out in part 1 of schedule 28 (*Title Matters*).

8.5.2 The Contractor shall without prejudice to clause 6.4 (*City Council's Title Warranty*) procure that:

8.5.2.1 the carrying out of the Works and the provision of the Services at each New Build Site, Environmental Works Area and Demolition Site by or on behalf of the Contractor (whether before, during or after the completion of the Works) shall be carried out in a manner which does not breach any provisions of the Disclosed Matters listed in schedule 28 (*Title Matters*) relating to that New Build Site, Environmental Works Area or Demolition Site; and

8.5.2.2 in carrying out the Works and providing the Services at each New Build Site, Environmental Works Area and Demolition Site, there shall be no action, or omission to act by the Contractor or any Contractor Related Party, which shall give rise to a right for any person to obtain title to or any right or interest over a New Build Site, Environmental Works Area or Demolition Site or any part of it (save in accordance with the terms of this Agreement).

8.5.3 Subject to clauses 58.3.1 and 58.3.2, the City Council is indemnified from and against third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis) suffered or incurred by the City Council as a result of or in connection with any breach of this clause 8.5 (*Compliance with Disclosed Matters*). The City

Council and the Contractor agrees that clauses 58.7 to 58.10 shall apply to this indemnity.

## **9. CONSULTATION AND PROTOCOLS**

### **9.1 Consultation with Tenants and Leaseholders**

Before commencing the Works and throughout the carrying out of the Works the Contractor shall comply with the arrangements for consultation with the Tenants and Leaseholders and other residents of the Dwellings affected thereby in accordance with this Agreement (including the Output Specification and the Contractor's Proposals and all Legislation and Guidance).

### **9.2 City Council's Protocols**

9.2.1 The Contractor shall, in undertaking the Works, adopt and fully comply with the City Council's Protocols.

9.2.2 In the event that the Contractor becomes aware of a Works or Services Denial Event the Contractor shall immediately upon becoming so aware notify the City Council of this fact.

## **10. THE WORKS**

### **10.1 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, completion, commissioning and testing of the Works so that:

10.1.1 each:

10.1.1.1 Dwelling shall achieve a Certificate of Availability Rented (Full Standard) or Certificate of Availability Leasehold (Full Standard) as appropriate on or

before the Planned Full Services Commencement Date (New Build) or Planned Full Services Commencement Date (Refurbishment) (as the case may be) for that Dwelling;

10.1.1.2 Demolition Works shall receive a Certificate of Completion (Demolition Works) on or before the date specified for completion of such Works in the Construction Programme;

10.1.1.3 Environmental Works shall receive a Certificate of Completion (Environmental Works and Communal Works) on or before the date specified for completion of such Works in the Construction Programme

10.1.1.4 Facility and Communal Area shall receive a Certificate of Availability Facilities and Communal Areas (Full Standard) on or before the date specified for completion of such Works in the Construction Programme.

10.1.2 the 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 City Council's Policies, Legislation and the provisions of Tenancy Agreement and Leaseholder's Leases. The Contractor shall, and in the event that the Contractor enters into any Sub-Contract in connection with the Works it shall ensure that such Sub-Contractor shall comply with all of the Equality Requirements;

10.1.3 new materials only will be used in carrying out the Works (unless the City Council agrees otherwise in writing or the contrary is set out in the Output Specification) and all goods

used or included in the Works will be of satisfactory quality, and there will be used or included in the Works none of those products and materials listed in schedule 8 (*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;

- 10.1.4 all persons employed in connection with the performance of the Works will be skilled and experienced in their several professions, trades and callings or adequately supervised;
- 10.1.5 all aspects of the Works will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Works in accordance with this Agreement having regard to the activities which are carried out at the Dwellings and Properties and also to the existence of Tenants and Leaseholders;
- 10.1.6 the Works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Project Sites are secure against trespassers and clean and tidy so far as practicable having regard to the nature of the Works;
- 10.1.7 adequate retaining and supporting walls are provided to support any Adjoining Property during the carrying out of the Works;
- 10.1.8 the Works are carried out and completed in a manner not likely to prejudice the satisfaction of the Output Specification; and

10.1.9 the Works are carried out in compliance with the Equality Requirements.

## 10.2 Inconsistencies

10.2.1 Where there is an inconsistency within the Works Delivery Plans the Contractor shall inform the City Council in writing of its proposed amendment to remove the inconsistency and the Contractor shall, subject to obtaining the written approval of the City Council in accordance with the Review Procedure to deal with such inconsistency, amend the Works Delivery Plans without any adjustment of the Unitary Charge.

10.2.2 Subject to clause 52 (*Change in Law*), where there is an inconsistency between the Works Delivery Plans and any Legislation, the Contractor shall amend the Works Delivery Plans to comply with such Legislation and any such amendment shall not be deemed to be a City Council 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.

## 10.3 Capital Works Contributions

10.3.1 The total amount of the Contractor's capital construction costs in relation to the Works (but excluding professional and administrative fees and other similar overheads) which form part of the Output Specification is one hundred and thirty eight million four hundred and eighty eight thousand nine hundred and twenty seven pounds (£138,488,927) ("**Total Works Capital Costs**").

10.3.2 Notwithstanding the amount of the Total Works Capital Costs, the City Council has agreed to make a contribution in the sum



of forty two million and six hundred thousand pounds (£42.6m) (excluding any amendments or adjustments, or interest payable on such sum) to the Total Works Capital Costs (the "**Contribution**").

10.3.3 The Contractor may claim, in accordance with clauses 10.3.4 to 10.3.7, a proportion of the Contribution in relation to each Rented Dwelling in respect of which:

10.3.3.1 a Certificate of Availability Rented (Full Standard) has been issued in accordance with clause 20.2 (*Certification of Availability*) following the Commencement Date; or

10.3.3.2 a Certificate of Availability Rented (Full Standard) has been issued in accordance with clause 20.6 (*Deemed Refurbishment Completion*).

10.3.4 In order to claim a proportion of the Contribution for each Rented Dwelling in accordance with clause 10.3.3, the Contractor will submit to the City Council's Representative on or before the last Working Day of each Payment Period:

10.3.4.1 a report:

(a) showing the number of Refurbishment Dwellings and New Build Dwellings in respect of which a Certificate of Availability Rented (Full Standard) has been issued during that Payment Period;

(b) including a copy of each Certificate of Availability Rented (Full Standard) for each of the Refurbishment Dwellings and New Build Dwellings which the Contractor is claiming has been issued during the Payment Period

pursuant to clause 10.3.4.1(a), with the address and the unique reference number for each of those Refurbishment Dwellings and New Build Dwellings set out on the relevant Certificate of Availability Rented (Full Standard);

- (c) setting out, where a Certificate of Availability Rented (Full Standard) has been issued in accordance with clause 20.6 (*Deemed Refurbishment Completion*), such evidence as is sufficient to satisfy the City Council (acting reasonably) of the proportion of the Works carried out in respect of such Dwelling prior to the date of issue of such Certificate of Availability Rented (Full Standard) and the costs and expenses (excluding professional/administrative fees and other similar overheads) incurred in respect of the Works, and
- (d) setting out, where a Certificate of Availability Rented (Full Standard) has previously been issued in accordance with clause 20.6 (*Deemed Refurbishment Completion*), such evidence as the City Council may reasonably require that the Availability Standards (Full) have been met in accordance with clause 20.7 (*Subsequent Works to Dwellings*).

(the "**Report**"); and

10.3.4.2 a request for payment equal to the amount of:

- (a) fifty three thousand and fifty one pounds (£53,051) for each New Build Dwelling; and
- (b) seventeen thousand, six hundred and eighty four pounds (£17,684) for each Refurbished Dwelling ("**Refurbishment Contribution**");
- (c) where a Refurbished Dwelling has had a Certificate of Availability Rent (Full Standard) issued in accordance with clause 20.6 (*Deemed Refurbishment Completion*), a pro-rated proportion of the Refurbishment Contribution for such Dwelling reflecting the costs and expenses (excluding professional/administrative fees and other similar overheads) incurred in respect of the Works and the proportion of Works carried out to such Dwelling as evidenced pursuant to clause 10.3.4.1(c); and
- (d) the balance of the Refurbishment Contribution for any Dwelling where a payment has already been made in respect of such Dwelling pursuant to clause 10.3.4.2(c) and the Availability Standards (Full) have been met in accordance with clause 20.7 (*Subsequent Works*);

shown in the Report (the "**Request**").

10.3.5 On receipt of a Report and Request, the City Council shall pay the full amount claimed by the Contractor in the relevant Request, in accordance with clause 10.3.7, unless and only to the extent that the City Council is of the reasonable opinion that a Certificate of Availability Rented (Full Standard) has not been

issued for a New Build Dwelling or a Refurbishment Dwelling identified in the Request. If the City Council is of the reasonable opinion that a Certificate of Availability Rented (Full Standard) has not been issued for a New Build Dwelling or a Refurbishment Dwelling identified in the Request, the City Council shall pay the full amount claimed in the Request less an amount withheld for those New Build Dwelling or a Refurbishment Dwelling for which the City Council reasonably believes that no Certificate of Availability Rented (Full Standard) has been issued, calculated based on the amounts referred to in clause 10.3.4.2.

10.3.6 If there is a dispute in relation to whether a Certificate of Availability Rented (Full Standard) has been issued for a New Build Dwelling or a Refurbishment Dwelling, the amount withheld in relation to such dispute, pursuant to clause 10.3.5, shall be a Disputed Amount as referred to clause 33.5 (*Disputed Amounts*) and the dispute shall be resolved in accordance with clauses 33.5 to 33.10.

10.3.7 Subject to clause 10.3.6 and subject to compliance by the Contractor with clause 10.3.4, the City Council will pay the sum claimed in the Request to the Contractor within twenty (20) Working Days of the end of the Payment Period in which the Request was made (which is the “due date” for the purpose of clause 77 (*Interest on Late Payment*)) provided always that:

10.3.7.1 the aggregate amount payable by the City Council pursuant to this clause 10.3.7 shall not exceed the amount specified in clause 10.3.2; and

10.3.7.2 the aggregate amount paid by the City Council shall not at any time exceed the sum shown in the table set out at schedule 31 (*Cumulative Capital*)

*Contribution Table*) as being the maximum aggregate amount payable by the City Council up to the relevant date.

10.3.8 The Contribution shall not be Indexed.

10.3.9 The provisions of clauses 33.5 (*Disputed Amounts*) to 33.12 (*European Monetary Union*) (inclusive) shall apply mutatis mutandis to the payment of the Contribution by the City Council in accordance with the provisions of this clause 10.3.

10.3.10 The Contractor confirms to the City Council, that the Contractor will comply with its obligations in clause 2.2(b) of the Collateral Deed (for the avoidance of doubt, the City Council acknowledges and agrees that failure to comply with such obligations will not result in a Contractor Default).

## **11. WORKS STIPULATIONS**

During the carrying out of the Works the Contractor shall and shall procure that the Building Contractor and any Building Sub-Contractor shall comply with the Works procedures contained in schedule 20 (*Works Procedures*).

## **12. REPRESENTATIVES**

### **12.1 Contractor's Representative**

The Contractor shall employ a representative, the identity of whom will be subject to the prior approval of the City Council (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 City Council 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.

## **12.2 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 City Council and the City Council'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 City Council in writing that such authority has been revoked) and the City Council shall not be required to determine whether any express authority has in fact been given.

## **12.3 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.

## **12.4 City Council's Representative**

12.4.1 The City Council shall appoint an individual to be the City Council'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 City Council's Representative.

12.4.2 The City Council's Representative may at any time and from time to time by notice in writing to the Contractor delegate some of his functions and authorities under this Agreement to any person (being an officer or employee of the City Council or ALMO). Any such notice given in writing to the Contractor shall specify the following (unless and until the City Council has notified the Contractor that such delegation or authority has been revoked):

- 12.4.2.1 the date on which the delegation of authority is to take place (which date for the avoidance of doubt, shall not be prior to the date of this notice);
- 12.4.2.2 the nature and extent of the delegation;
- 12.4.2.3 any limitation on the authority so delegated; and
- 12.4.2.4 the name of the person so authorised to act on behalf of the City Council.

Thereafter the acts and omissions of the persons so nominated shall be binding upon the City Council as if those persons were the agents of the City Council in respect of those matters so delegated (unless and until the City Council has notified the Contractor that such delegation of authority has been revoked).

## **12.5 Authority of City Council's Representative**

The City Council's Representative shall have full authority to act on behalf of the City Council for all purposes of this Agreement. The Contractor shall be entitled to treat any act of the City Council's Representative in connection with this Agreement as being expressly authorised by the City Council (save where the City Council 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.

## **12.6 Notices etc**

- 12.6.1 Subject to clause 71 (*Notices*), any notice, information, instructions or public communication given to:
  - 12.6.1.1 the Contractor's Representative shall be given in writing and shall be deemed to have been given to the Contractor; and

12.6.1.2 the City Council's Representative shall be given in writing and shall be deemed to have been given to the City Council.

12.6.2 The City Council 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 City Council unless such person was the City Council's Representative or a person to whom the City Council Representative has delegated his functions and authorities in accordance with clause 12.4.2.

### **13. SITE MEETINGS**

The Contractor shall procure that representatives of the City Council 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 City Council.

### **14. FURTHER DESIGN**

#### **14.1 Obligation to Finalise Design**

The Contractor shall develop and finalise the design and specification of the Works in accordance with the Design and Construction Plan and the City Council may review the Reviewable Design Data in accordance with the Review Procedure and the provisions of this clause 14 (*Further Design*).

#### **14.2 Submission of Reviewable Design Data**

The Contractor shall submit the Reviewable Design Data and the design of any variations developed in accordance with clause 15



(*Changes to the Works*) to the City Council's Representative for review under the Review Procedure.

#### **14.3 No Construction prior to Review**

The Contractor shall not commence or permit the commencement of the construction of the part or parts of the 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.

#### **14.4 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 Works (subject to the need to submit any associated Reviewable Design Data to review) in accordance with that Approved RDD Item.

#### **14.5 Review of Design Data**

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

#### **14.6 Design Database**

The Contractor shall procure that the Building Contractor establishes and maintains a computerised design database which the Contractor's Representative and the City Council'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 City Council'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 City Council's Representative or any person authorised by the City Council's Representative.

#### **14.7 Design and Construction Plan**

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

### **15. CHANGES TO THE WORKS**

#### **15.1 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 52 (*Change in Law*) shall apply.

#### **15.2 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.

#### **15.3 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 of Law or as a direct consequence of a City Council Change or a variation to the Works Delivery Plan which is implemented at the request or agreement of the City Council) which

would delay a Planned Services Commencement Date and/or would lead to an increase in the Unitary Charge.

#### **15.4 No Implementation without Consent**

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

### **16. EXTENSIONS OF TIME**

#### **16.1 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, Milestone(s) or Planned Services Commencement Date may not be achieved, the Contractor shall as soon as reasonably practicable and in any event within twenty (20) Working Days of becoming aware of the likely delay give notice to the City Council to that effect specifying:

16.1.1 the reason for the delay or likely delay; and

16.1.2 an estimate of the likely effect of the delay on the Works including the relevant Start on Site Date, any relevant Milestone Date(s) or Planned Services Commencement Date (taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with clause 16.3 (*Duty to Mitigate*)).

## 16.2 **Supply of Information**

Following service of a notice by the Contractor pursuant to clause 16.1 (*Notice*), the Contractor shall promptly supply to the City Council any further information relating to the delay which:

16.2.1 is received by the Contractor; or

16.2.2 is reasonably requested by the City Council.

## 16.3 **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 16.1 (*Notice*).

## 16.4 **Time for Completion of the Works**

If any delay or anticipated failure to meet a Start on Site Date, Milestone Date or Planned Services Commencement Date (or if the delay occurs after a Start on Site Date, Milestone Date or a Planned Services Commencement Date a delay in completion of the Works) is notified to the City Council by the Contractor as being in the Contractor's reasonable opinion attributable to:

16.4.1 a Compensation Event, then the provisions of clause 16.5 (*Delays due to a Compensation Event*) shall apply;

16.4.2 a Relief Event, then the provisions of clause 51 (*Relief Events*) shall apply;

16.4.3 a Force Majeure Event, then the provisions of clause 39 (*Termination on Force Majeure*) shall apply;

16.4.4 a City Council Change, then the provisions of the Change Protocol shall apply; or

16.4.5 a Qualifying Change in Law, then the provisions of clause 52 (*Change in Law*) shall apply.

## 16.5 Delays due to a Compensation Event

If, as a direct result of the occurrence of a Compensation Event:

16.5.1 the Contractor is unable to commence the Works on the Start on Site Date or, achieve a Milestone by the relevant Milestone Date or commence the relevant Services on a Planned Services Commencement Date;

16.5.2 the Contractor is unable to comply with its obligations under this Agreement; and/or

16.5.3 the Contractor incurs costs or loses revenue,

then the Contractor is entitled to apply for relief from its obligations and/or to claim compensation under this Agreement.

## 16.6 Procedure for Relief and Compensation

Subject to clause 16.8 (*Late Provision of Information*) below, to obtain relief, extension and/or claim compensation the Contractor must:

16.6.1 as soon as practicable, and in any event within fifteen (15) Working 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 City Council a notice of its claim for an extension of time to the Start on Site Date or Planned Services Commencement Date, an amendment to the relevant Milestone(s), payment of compensation and/or relief from its obligations under this Agreement;

16.6.2 within ten (10) Working Days of receipt by the City Council of the notice referred to in clause 16.6.1 (*Procedure for Relief and Compensation*), give full details of the Compensation Event and the extension of time amendment to the relevant Milestone(s) and/or any Estimated Change in Project Costs and/or loss of revenue claimed; and

16.6.3 demonstrate to the reasonable satisfaction of the City Council that:

16.6.3.1 the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or loss of revenue and/or any delay in the achievement of the Start on Site Date, Milestone or Planned Services Commencement Date and/or breach of the Contractor's obligations under this Agreement; and

16.6.3.2 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.

## **16.7 Giving of Relief and Compensation**

In the event that the Contractor has complied with its obligations under clause 16.6 (*Procedure for Relief and Compensation*), then:

16.7.1 in the case of a delay, the Planned Services Commencement Date shall be postponed by such time or the relevant Milestone(s) shall be amended as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;

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

16.7.2.1 in relation to a Dwelling, on or before the Planned Services Commencement Date (as the case may be) for that Dwelling; or

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

the City Council 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) Working Days of its receipt of a written demand by the Contractor supported by all relevant information;

16.7.3 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 16.7 (*Giving of Relief and Compensation*) but which reflects a change in the costs being incurred by the Contractor after the Planned Services Commencement Date, the City Council shall compensate the Contractor in accordance with clause 16.10 (*Method of Calculating Compensation*) by an adjustment to the Unitary Charge in accordance with clause 67 (*Financial Adjustments*); and/or

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

## **16.8 Late Provision of Information**

In the event that information is provided after the dates referred to in clause 16.6 (*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.

## **16.9 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 City Council disagrees that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to relief under clauses 16.5 (*Delays due to a Compensation Event*) to clause 16.7 (*Giving of Relief and Compensation*), the parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

## **16.10 Method of Calculating Compensation**

Any payment of compensation referred to in clause 16.7.3 (*Giving of Relief and Compensation*) shall be calculated and made in accordance with clause 67 (*Financial Adjustments*).

# **17. CDM REGULATIONS**

## **17.1 Contractor to act as Client**

In respect of the CDM Regulations:

17.1.1 in this clause 17.1 (*Contractor to act as Client*), Client, Executive, Health and Safety File and CDM Co-ordinator have the same meanings as in the CDM Regulations;



17.1.2 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 City Council hereby agrees to such election.

17.1.3 the Contractor shall ensure that the Building Contractor is aware of such election and warrants to the City Council 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

17.1.4 the Contractor shall within twenty (20) Working Days of the issue of the Certificate of Availability deliver to the City Council the Health and Safety File.

## **17.2 Compliance with CDM Regulations**

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

17.2.1 all the obligations, requirements and duties of the Client arising under the CDM Regulations in connection with the Project; and

17.2.2 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.

## **18. THE PROJECT SITES**

### **18.1 Access**

If at any time the Contractor requires access to the Project Sites and/or Properties or any interest in any land which does not form part of the

Project Sites and/or Properties or any additional rights beyond those which the Contractor has in relation to any part of the Project Sites and/or Properties, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Contractor.

## 18.2 Site Matters

18.2.1 Subject to clauses 18.3, 18.4, 18.9 and 18.10.1 the Site Conditions 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:

18.2.1.1 carried out a Ground Physical and Geophysical Investigation and to have inspected and examined the Project Sites and their surroundings and (where applicable) any existing structures or works on, over or under the Project Sites;

18.2.1.2 satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Project Sites, the loadbearing and other relevant properties of the Project Sites, the risk of injury or damage to property affecting such Project Sites, 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;

18.2.1.3 satisfied itself as to the absence of Contamination;

18.2.1.4 satisfied itself as to the adequacy of the means and rights of access to and through the Project Sites 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 Sites);

18.2.1.5 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the City Council) with access to or use of, or rights in respect of, the Project Sites with particular regard to the owners of any land adjacent to the Project Sites; and

18.2.1.6 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.

18.2.2 The Contractor accepts full responsibility for all matters referred to in clause 18.2.1 (*Site Matters*) and the Contractor shall subject to clauses 18.3, 18.4, 18.9 and 18.10.1:

18.2.2.1 not be entitled to make any claim against the City Council of any nature whatsoever, without prejudice to clause 51 (*Relief Events*), on any grounds including the fact that incorrect or insufficient information on any matter relating to the Project Sites was given to it by any person, whether or not a City Council Related Party; and

18.2.2.2 be responsible for, and hold the City Council harmless from, cleaning up and otherwise dealing with any Contamination at such Project Sites 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 City Council or the Contractor).

### **18.3 Site Matters - Refurbishment Properties**

#### **18.3.1 Any Site Conditions and/or Contamination:**

18.3.1.1 which have not been revealed by the Surveys or which would not (or could not) have been revealed by the Surveys had the Surveys:

(a) included all the Refurbishment Properties (if the Surveys do not extend to all Refurbishment Properties); or

(b) been carried out with the level of skill and care reasonably to have been expected from competent professionals carrying out such Surveys; or

18.3.1.2 which would not have been identified had the Contractor carried out such additional surveys as it would have been reasonable to expect a reasonably experienced contractor exercising reasonable skill and care to have carried out in the circumstances or otherwise would not have been revealed by a non-intrusive inspection; and

which in the case of either 18.3.1.1 or 18.3.1.2 exist in any parts of the Refurbishment Sites which are under existing Dwellings and/or Properties as at Financial Close shall not be the responsibility of the Contractor.

If the Contractor is not responsible for such Site Conditions and/or Contamination under this clause 18.3.1 then the City Council shall be so responsible.

18.3.2 Where pursuant to clause 18.3.1 the City Council is responsible for any of the matters referred to then the following provisions shall apply:

18.3.2.1 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 a City Council Change;

18.3.2.2 no Unavailability Deductions or Performance Deductions may be made in respect of the relevant Dwelling or Property pursuant to schedule 5 (*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 a City Council Change;

18.3.2.3 where any such matter is Contamination the City Council 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.

18.3.3 Subject to clause 18.3.1, the Contractor shall be entirely responsible for any Site Conditions and/or Contamination relating to the Refurbishment Sites.

18.3.4 The Contractor shall indemnify the City Council in respect of all Direct Losses and hold the City Council harmless from cleaning up and otherwise dealing with any Contamination within the Project Sites and/or Properties where clause 18.3.3 applies.

18.3.5 The Contractor accepts full responsibility for all matters referred to in clause 18.3.3 and the Contractor shall:

18.3.5.1 not be entitled to make any claim against the City Council of any nature whatsoever, without prejudice to clause 51 (*Relief Events*), on any grounds including the fact that incorrect or insufficient information on any matter relating to the Refurbishment Properties was given to it by any person, whether or not a City Council Related Party; and

18.3.5.2 be responsible for, and hold the City Council harmless from, cleaning up and otherwise dealing with any Contamination at the Refurbishment Properties 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 City Council or the Contractor).

### **18.3B Judicial Proceedings**

18.3B.1 Either party shall notify the other forthwith upon becoming aware of any Judicial Proceedings in relation to any of the Project Sites.

18.3B.2 On becoming aware, or following notification, of any Judicial Proceedings, the Contractor shall take all reasonable steps to mitigate the effects of such Judicial Proceedings (including without limitation revising the Construction Programme in accordance with this Agreement provided that such revision does not result in material additional cost or cause delay to any

obligation under this Agreement for which the Contractor is not compensated or given relief).

18.3B.3 The City Council shall be entitled to suspend the Works at any of the relevant Project Sites(s) forthwith by written notice to the Contractor ("**City Council Suspension Notice**") upon becoming aware of any Judicial Proceedings until such time as:

18.3B.3.1 such Judicial Proceedings are finally dismissed;

18.3B.3.2 this Agreement is varied by means of a City Council Change in accordance with clause 53 (*City Council and Contractor Changes*) in order to permit the Contractor to resume the Works; or

18.3B.3.3 the parties otherwise agree that the relevant Works shall be resumed.

18.3B.4 The Contractor shall be entitled to suspend the Works at any of the relevant Project Site(s) if required to do so by a Relevant Authority as a result of any Judicial Proceedings by written notice to the City Council ("**Contractor Suspension Notice**") until such time as:

18.3B.4.1 such Judicial Proceedings are finally dismissed;

18.3B.4.2 this Agreement is varied by means of a City Council Change in accordance with clause 53 (*City Council and Contractor Changes*) in order to permit the Contractor to resume the Works; or

18.3B.4.3 the parties otherwise agree that the relevant Works shall be resumed.

18.3B.5 Any suspension of the Works pursuant to either clause 18.3B.3 or 18.3B.4 and its consequences shall be deemed to be a Compensation Event, on and from the date of the City Council Suspension Notice, or Contractor Suspension Notice (whichever relevant) and the provisions of clauses 16.5 to 16.10 (inclusive) (*Extensions of Time*) shall apply provided that the Contractor has complied with its obligation to mitigate pursuant to clause 18.3B.2.

18.3B.6 If by the date falling twelve (12) months after the date of:

18.3B.6.1 the City Council Suspension Notice, the Works (or relevant part thereof) are still suspended pursuant to clause 18.3B.3; or

18.3B.6.2 the Contractor Suspension Notice, the Works (or the relevant part thereof) are still suspended pursuant to clause 18.3B.4,

then unless agreed otherwise in writing between the parties, the City Council shall issue a City Council Change excluding the relevant Project Site, or Project Sites.

### **18.3C Town and Village Green Application**

18.3C.1 Either party shall notify the other forthwith upon becoming aware of any Town and Village Green Application in relation to any TVG Site.

18.3C.2 On becoming aware, or following notification, of any Town and Village Green Application, the Contractor shall take all reasonable steps to mitigate the effects of such Town and Village Green Application (including, without limitation, revising the Construction Programme in accordance with this Agreement provided that such revision does not result in material additional



cost or cause delay to an obligation under this Agreement for which the Contractor is not compensated or given relief).

18.3C.3 The City Council shall be entitled to:

18.3C.3.1 if the Contractor has not commenced the Works at the relevant TVG Site, require the Contractor to delay the commencement such Works at such TVG Site; or

18.3C.3.2 if the Contractor has commenced the Works at the relevant TVG Site, require the Contractor to suspend the Works at such TVG Site forthwith,

by written notice to the Contractor ("**City Council Suspension Notice**") upon becoming aware of any Town and Village Green Application until such time as:

18.3C.3.3 such Town and Village Green Application is finally dismissed;

18.3C.3.4 this Agreement is varied by means of a City Council Change in accordance with clause 53 (*City Council and Contractor Changes*) in order to permit the Contractor to commence or resume the Works; or

18.3C.3.5 the parties otherwise agree that the relevant Works shall be commenced or resumed.

18.3C.4 The Contractor shall be entitled to suspend the Works at any of the TVG Sites if required to do so by a Relevant Authority as a result of any Town and Village Green Application by written notice to the City Council ("**Contractor Suspension Notice**") until such time as:

18.3C.4.1 such Town and Village Green Application is finally dismissed;

18.3C.4.2 this Agreement is varied by means of a City Council Change in accordance with clause 53 (*City Council and Contractor Changes*) in order to permit the Contractor to resume the Works; or

18.3C.4.3 the parties otherwise agree that the relevant Works shall be resumed.

18.3C.5 Where either party has proposed a Change pursuant to clauses 18.3C.3 or 18.3C.4 (as relevant) or otherwise to deal with the Town and Village Green Application, the parties shall consider a Change which shall achieve the alternative contingency solution set out in column 7 (*sc4I risk mitigation design option*) of Part 2 of schedule 29 (*Planning Risks*) but, for the avoidance of doubt, the parties may propose other solutions through a Change not so specified and may propose a Change at any time. Such Change shall:

18.3C.5.1 provide for any necessary amendments to the Output Specification necessary to give effect to the Change; and

18.3C.5.2 provide for any amendments to the Construction Programme, any relevant Milestones, and provisions of this Agreement, necessary to give effect to the matters identified in the column 10 (*Fin & Delivery Impact*) of part 2 of the Planning Risks Schedule in respect of such Consent.

18.3C.6 Where the alternative contingency solution set out in column 7 (*sc4I risk mitigation design option*) of Part 2 of schedule 29 (*Planning Risks*) is being implemented pursuant to a Change,

the Estimated Change in Project Costs shall not exceed the amount set out in column 12 (*Cost Impact*) of Part 2 of schedule 29 (*Planning Risks*) unless the Contractor can justify to the City Council's reasonable satisfaction any increase in such costs. The Contractor agrees that, notwithstanding the Change Protocol, any Estimated Change in Project Costs that are redesign costs or planning application costs, shall be borne equally between the Contractor and the City Council.

18.3C.7 Any suspension of the Works pursuant to either clause 18.3C.3 or 18.3C.4 and its consequences shall be deemed to be a Compensation Event, on and from the date of the City Council Suspension Notice, or Contractor Suspension Notice (whichever relevant) and the provisions of clauses 16.5 to 16.10 (inclusive) (*Extensions of Time*) shall apply provided that the Contractor has complied with its obligation to mitigate pursuant to clause 18.3C.2.

18.3C.8 If by the date falling eighteen (18) months after the date of:

18.3C.8.1 the City Council Suspension Notice, the Works (or the relevant part thereof):

(a) are still not commenced pursuant to clause 18.3C.3.1; or

(b) are still suspended pursuant to clause 18.3C.3.2; or

18.3C.8.2 the Contractor Suspension Notice, the Works (or the relevant part thereof) are still suspended pursuant to clause 18.3C.4,

then, unless agreed otherwise in writing between the parties, the City Council shall issue a City Council Change excluding the relevant Project Site, or Project Sites.

## 18.4 Site Matters - Demolition Sites and Early Demolition Sites

18.4.1 In respect of Sites which are Demolition Sites (including Demolition Sites which are also New Build Sites) or Early Demolition Sites, any Site Conditions and/or Contamination which:

18.4.1.1 it is not practicable for the Contractor to investigate;

18.4.1.2 have not been revealed by any site investigation survey of such Demolition Sites or Early Demolition Sites unless they should reasonably have been discoverable if any such site investigation survey had been properly carried out with the level of skill and care reasonably to have been expected from competent professionals carrying out such surveys being aware of any matters disclosed by the Disclosed Survey Data; and

18.4.1.3 in the case of either clause 18.4.1.1 or 18.4.1.2 exist in any parts of the Demolition Sites or Early Demolition Sites which are under existing Dwellings and/or Properties as at Financial Close or, in relation to Early Demolition Sites, on the date immediately before the City Council commences carrying out the Early Demolition Works,

shall not be the responsibility of the Contractor.

If the Contractor is not responsible for such Site Conditions and/or Contamination under this clause 18.4.1 then the City Council shall be so responsible.

18.4.2 Where pursuant to clause 18.4.1 the City Council is responsible for any of the matters referred to then the following provisions shall apply:

- 18.4.2.1 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 a City Council Change;
- 18.4.2.2 no Unavailability Deductions or Performance Deductions may be made in respect of the relevant Dwelling or Property pursuant to schedule 5 (*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 a City Council Change;
- 18.4.2.3 where any such matter is Contamination the City Council 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.
- 18.4.3 Subject to clause 18.4.1 the Contractor shall be entirely responsible for any Site Conditions and/or Contamination relating to the Demolition Sites or Early Demolition Sites;
- 18.4.4 The Contractor shall indemnify the City Council in respect of all Direct Losses and hold the City Council harmless from cleaning up and otherwise dealing with any Contamination within the Demolition Sites or Early Demolition Sites where clause 18.4.3 applies.

18.4.5 The Contractor accepts full responsibility for all matters referred to in clause 18.4.3 and the Contractor shall:

18.4.5.1 not be entitled to make any claim against the City Council of any nature whatsoever, without prejudice to clause 51 (*Relief Events*), on any grounds including the fact that incorrect or insufficient information on any matter relating to the Demolition Sites or Early Demolition Sites was given to it by any person, whether or not a City Council Related Party; and

18.4.5.2 be responsible for, and hold the City Council harmless from, cleaning up and otherwise dealing with any Contamination at the Demolition Sites or Early Demolition Sites 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 City Council or the Contractor).

## 18.5 Consents and Planning Approval

18.5.1 The Contractor shall:

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

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

- 18.5.1.3 supply free of charge to the City Council'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;
- 18.5.1.4 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;
- 18.5.1.5 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 City Council 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 clause, references in this Agreement to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived.

18.5.2 The Contractor and the City Council shall each comply with Part 3 of schedule 29 (*Planning Risks*) in respect of each of their obligations in relation to the planning contribution for the Project.

## 18.6 **No Warranty**

Subject to clause 18.3 (*Site Matters - Refurbishment Properties*) and clause 18.4 (*Site Matters - Demolition Sites and Early Demolition Sites*), clause 18.9 (*Defects and Asbestos – Refurbishment Properties*) and clause 18.10 (*Asbestos – Demolition Sites*), the Contractor shall take the Project Sites, Dwellings and/or Properties 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 City Council as to the fitness and suitability of the Project Sites, Dwellings and/or Properties or any part thereof for the Works or for any other purpose.

## 18.7 **Third Party Rights**

Subject to schedule 28 (*Title Matters*), 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 Sites, Dwellings and/or Properties, 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.

## 18.8 **Defects - New Build Properties**

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 Properties, or any part of them, or anything installed in the New Build Properties.

## 18.9 **Defects and Asbestos - Refurbishment Properties**

18.9.1 Subject to (and without prejudice to the operation of) clause 18.3 (*Site Matters - Refurbishment Properties*), the City Council



accepts, in relation to the Refurbishment Properties, responsibility (including any financial and other consequences which result either directly or indirectly) for:

18.9.1.1 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 (including by reference to the Disclosed Survey Data and any matter relating to specific Dwelling archetypes reasonably and generally known by contractors in carrying out works similar to the Refurbishment Works) other than any such Defect which should have been revealed:

- (a) 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 or otherwise been carried out with the level of skill and care reasonably to have been expected from competent professionals carrying out such Stock Condition Survey;
- (b) by the data in the Stock Condition Survey had the Stock Condition Survey included all the Refurbishment Properties; or
- (c) had the Contractor carried out such additional surveys as it would have been reasonable to expect a reasonably experienced contractor exercising reasonable skill and care to have carried out in the circumstances or otherwise

would have been revealed by a non-intrusive inspection; and

18.9.1.2 any asbestos not identified in the Disclosed Survey Data, or any asbestos which is not 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 (including by reference to the Disclosed Survey Data) other than any asbestos which should have been revealed:

- (a) by the data in the Asbestos Survey had the Asbestos Surveyor undertaken the Asbestos Survey in accordance with the Asbestos Surveyor's Appointment or otherwise been carried out with the level of skill and care reasonably to have been expected from competent professionals carrying out such Asbestos Surveys;
- (b) by the data in the Asbestos Survey had the Asbestos Survey included all the Refurbishment Properties; or
- (c) had the Contractor carried out such additional surveys as it would have been reasonable to expect a reasonably experienced contractor exercising reasonable skill and care to have carried out in the circumstances or otherwise would have been revealed by non-intrusive inspection;

18.9.2 Where pursuant to clause 18.9.1 the City Council is responsible for any of the matters referred to then the following provisions shall apply:

- 18.9.2.1 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 a City Council Change;
- 18.9.2.2 no Unavailability Deductions or Performance Deductions may be made in respect of the relevant Refurbishment Properties pursuant to schedule 5 (*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 a City Council Change; and
- 18.9.2.3 where any such matter is asbestos the City Council shall further hold the Contractor harmless from cleaning up and otherwise dealing with such asbestos and shall indemnify the Contractor in respect of all Direct Losses incurred by the Contractor resulting from such asbestos.
- 18.9.3 For the avoidance of any doubt, the Contractor accepts, in relation to the Refurbishment Properties, entire responsibility (including any financial and other consequences which result either directly or indirectly) for any Defect or asbestos not covered by clause 18.9.1.
- 18.9.4 Where a Refurbishment Property contains Defects, the City Council 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 28.6 (*Changes to Numbers of Dwellings by Tenure*) shall apply as if the Dwelling had been subject to a CNDT.

## 18.10 Asbestos - Demolition Sites

18.10.1 The City Council accepts, in relation to the Demolition Sites, responsibility (including any financial and other consequences which result either directly or indirectly) from;

18.10.1.1 any asbestos not identified in the Disclosed Survey Data, or any asbestos which is not 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 (including by reference to the Disclosed Survey Data) other than any asbestos which should have been revealed:

- (a) by the data in the Asbestos Survey had the Asbestos Surveyor undertaken the Asbestos Survey in accordance with the Asbestos Surveyor's Appointment or otherwise been carried out with the level of skill and care reasonably to have been expected from competent professionals carrying out such Asbestos Surveys;
- (b) by the data in the Asbestos Survey had the Asbestos Survey included all the Demolition Sites; or
- (c) had the Contractor carried out such additional surveys as it would have been reasonable to expect a reasonably experienced contractor exercising reasonable skill and care to have carried out in the circumstances or otherwise would have been revealed by a non-intrusive inspection;

18.10.2 Where pursuant to clause 18.10.1 the City Council is responsible for any asbestos then the following provisions shall apply:

18.10.2.1 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 a City Council Change;

18.10.2.2 no Unavailability Deductions or Performance Deductions may be made in respect of the relevant Demolition Site pursuant to schedule 5 (*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 a City Council Change; and

18.10.2.3 the City Council shall further hold the Contractor harmless from cleaning up and otherwise dealing with such asbestos and shall indemnify the Contractor in respect of all Direct Losses incurred by the Contractor resulting from such asbestos.

18.10.3 For the avoidance of any doubt, the Contractor accepts, in relation to the Demolition Sites, entire responsibility (including any financial and other consequences which result either directly or indirectly) for any asbestos not covered by clause 18.10.1.

18.10.4 Subject to clause 18.10.1 the condition of any Properties and/or Dwellings on the Demolition Sites shall be the sole responsibility of the Contractor and accordingly the Contractor shall be deemed to have inspected and examined any Property and/or Dwelling on the Demolition Sites.

18.10.5 The Contractor accepts full responsibility for matters referred to in clause 18.10.4 and the Contractor shall:

18.10.5.1 not be entitled to make any claim against the City Council of any nature whatsoever without prejudice to clause 51 (*Relief Event*) on any grounds whatsoever including the fact that incorrect or insufficient information on any matters relating to the Demolition Sites was given to it by any person, whether or not a City Council Related Party; and

18.10.5.2 not be entitled to make a claim against the City Council because any matter for which the Contractor is responsible under this clause 18.10.5.2 is not (or could not have been) revealed by the Asbestos Survey.

#### **18.11 Fossils and Antiquities**

18.11.1 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 Sites are or shall become, upon discovery, the absolute property of the City Council.

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

18.11.2.1 immediately inform the City Council's Representative of such discovery;

18.11.2.2 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

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

18.11.3 The City Council shall procure that the City Council's Representative promptly, and in any event within five (5) Working Days, issues an instruction to the Contractor specifying what action the City Council's Representative requires to be taken in relation to such discovery provided that if no instruction is forthcoming within such five (5) Working Days the Contractor may continue to carry out the Works.

18.11.4 The Contractor shall promptly and diligently comply with any instruction issued by the City Council's Representative referred to in clause 18.11.3 (except and to the extent that such instruction constitutes a City Council Change pursuant to clause 18.11.6, in which case the provisions of the Change Protocol shall apply) at its own cost.

18.11.5 If directed by the City Council's Representative, the Contractor shall allow representatives of the City Council to enter the Project Sites for the purposes of removal or disposal of such discovery, provided that such entry shall be subject to the City Council complying with all relevant safety procedures, which shall include any relevant health and safety plans for the construction or refurbishment of the Properties from time to time and any or reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Representative from time to time.

18.11.6 If any instruction referred to in this clause 18.11 (*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 Properties) 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 a City Council Change and the provisions of the Change Protocol shall apply.

18.11.7 The City Council shall act promptly and diligently in dealing with its obligations hereunder in relation to any find so as to mitigate any effect on the Contractor, the Works and/or the Services.

#### **18.12 Early Demolition**

The City Council shall carry out the relevant demolition works at each of the Early Demolition Sites to the relevant Early Demolition Works Standards by the relevant Early Demolition Works Completion Date.

#### **18.13 Contamination**

To the extent that any part(s) of the Project Site(s) suffer from or are affected by Contamination arising from a source off site (whether or not on adjacent land) the Contractor shall be responsible for cleaning up or otherwise dealing with such Contamination and for preventing the recurrence of such Contamination on the Project Sites and then the following provisions shall apply:

18.13.1 where any such matter arises on or before the last Services Commencement Date for such Project Site it shall be deemed to be a Relief Event for a reasonable period (to be agreed between the parties acting reasonably) for the purposes of this Agreement;

18.13.2 where any such matter arises after the Services Commencement Date for such Project Site it shall be deemed to be a Relief Event and no Deductions may be made in respect of the relevant area of the Project Site affected by such Contamination pursuant to schedule 5 (*Payment Mechanism*) for a reasonable period (to be agreed between the parties



acting reasonably) but any work or change to the Services required or instructed to be done in consequence of it, shall be the Contractor's responsibility and shall not constitute a City Council Change;

18.13.3 Before or after the last Services Commencement Date in respect of a Project Site the Contractor shall:

18.13.3.1 clean up, or otherwise deal with, such Contamination, and take steps reasonably necessary to prevent the recurrence of the same, all in accordance with Good Industry Practice, all relevant Consents and Legislation; and

18.13.3.2 other than where clause 18.13.3.3 applies hold the City Council harmless from, and indemnify the City Council in respect of, all Direct Losses incurred by the City Council resulting from such Contamination; and

18.13.3.3 the City Council shall, but only to the extent that the Contractor is able to demonstrate to the City Council that it does not have the right to take action against third parties in its own name to recover the losses suffered or incurred by the Contractor in cleaning up or otherwise dealing with such Contamination, at the City Council's option either:

(a) take such action against third parties in its own name as the Contractor may (acting reasonably) direct; or

(b) permit the Contractor to take such action in the name of the City Council at the Contractor's own expense in which case the provisions of

clauses 58.8 (*Conduct of Claims*) and 58.9 (*Costs of Claims*) shall apply as if the Contractor were the Indemnifying Party and the City Council were the Indemnified Party, except that the Contractor shall not pay or settle such claims without the prior consent of the City Council,

subject to the Contractor indemnifying the City Council in respect of all costs properly and reasonably incurred by the City Council in respect of such action. Where the City Council takes action under clause 18.13.3.3(a) or 18.13.3.3(b) (or where it is otherwise obliged to take action against third parties in respect of such losses), the City Council shall be liable to the Contractor for all losses suffered or incurred by the Contractor as a result of its obligations under this clause 18.13, provided that the Contractor's entitlement in respect of any matter to which this clause 18.13.3.3 applies shall be limited to the amount recovered by or in the name of the City Council from the relevant third party in respect of the losses to in this clause 18.13.3.3.

## **19. MONITORING AND INSPECTION**

### **19.1 Right of Inspection**

The Contractor shall procure that the City Council or any representative or adviser of the City Council 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 Sites 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.

#### 19.1.1 Right to Open Up

19.1.1.1 Subject to clause 19.1.1.2, the City Council's Representative shall have the right at any time prior to the relevant Planned Services Commencement Date to request the Contractor to open up and inspect any part or parts of the Works at that Property where the City Council's Representative reasonably believes that such part or parts of the Works is or are defective and the Contractor shall comply with such request.

19.1.1.2 Prior to exercising his right pursuant to clause 19.1.1.1 above, the City Council's Representative shall notify the Contractor of his intention to exercise such right, setting out detailed reasons.

19.1.1.3 If, following the exercise by the City Council's Representative of his right pursuant to clause 19.1.1.1 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 16 (*Extensions of Time*), be treated as a Compensation Event.

19.1.1.4 If, following the exercise by the City Council's Representative of his right pursuant to clause 19.1.1.1, 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 City Council and the Contractor shall not be entitled to any extension of time in relation to such rectification and making good of the Works.

19.1.1.5 If, following the exercise by the City Council's Representative of his right pursuant to clause 19.1.1.1, the City Council'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 62 (*Dispute Resolution*).

19.1.1.6 Without prejudice to the rights of the City Council's Representative pursuant to this clause 19.1.1 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 19 (*Monitoring and Inspection*).

## 19.2 **Inspection of Facilities**

The City Council or a representative or advisor of the City Council 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.

## 19.3 **Contractor's Reasonable Assistance**

The Contractor shall procure that satisfactory facilities are made available to the City Council and any representative of the City Council and that reasonable assistance is given for the purposes of clause 19.1

*(Right of Inspection)* and clause 19.2 *(Inspection of Facilities)*, subject to the Contractor's and the Sub-Contractors' construction or operational requirements not being adversely affected and to the City Council reimbursing the Contractor for any reasonable costs or expenses incurred as a result of the action taken by the City Council under clause 19.1 *(Right of Inspection)* and clause 19.2 *(Inspection of Facilities)*.

#### **19.4 Health and Safety Requirements**

The City Council and its representative shall at all times comply with any health and safety requirements when exercising its rights under this clause 19 *(Monitoring and Inspection)*.

#### **19.5 Supply of Information**

The Contractor shall supply to the City Council and any representative or adviser of the City Council visiting any of the Project Sites pursuant to clauses 19.1 *(Right of Inspection)* and 19.2 *(Inspection of Facilities)* such information in respect of the Works as may reasonably be required.

#### **19.6 Site Meetings, Monitoring and Inspection**

19.6.1 The Contractor shall procure that:

19.6.1.1 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 City Council's Representative and such other authorised personnel as notified by the City Council to the Contractor shall on reasonable prior notice appropriate to the

circumstances have unrestricted access to all parts of the Project Sites at all reasonable times during normal working hours necessary to:

(a) view the state and progress of Works at any of the Project Sites 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;

19.6.1.2 the City Council's Representative shall have such rights of access to the Project Sites in an emergency as it (acting reasonably) considers suitable in the circumstances; and

19.6.1.3 monthly progress meetings and site meetings are held and that the City Council'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 City Council's Representative may reasonably request.

19.6.2 If, following any viewing, visit or inspection made by the City Council, it is discovered that there are defects in any of the Works or that the Contractor has materially failed to comply with the Output Specification or the Contractor's Proposals, the

City Council 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 City Council that it is capable of performing and will perform all its obligations under this Agreement.

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

## **19.7 Damages**

If the City Council or a City Council Related Party causes material damage to any of the Project Sites in exercising any right under this clause 19 (*Monitoring and Inspection*), then the City Council shall be liable to the Contractor for the reasonable costs directly caused by such damage.

## **20. CERTIFICATION OF AVAILABILITY**

### **20.1 Independent Certifier**

20.1.1 The City Council 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.

20.1.2 The City Council and the Contractor shall procure that the Independent Certifier carries out its obligations pursuant to the terms of the Independent Certifier's Deed of Appointment.

20.1.3 The City Council and the Contractor shall each comply with the obligations placed upon them under the Independent Certifier's Deed of Appointment.

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

20.1.4.1 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;

20.1.4.2 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

20.1.4.3 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.

20.1.5 The City Council 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 City Council 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.

20.1.6 In the event of the Independent Certifier's Deed of Appointment being terminated otherwise than following full performance, the City Council 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 City Council 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.

20.1.7 In the event that the City Council and the Contractor fail to agree the identity and/or terms of a replacement Independent Certifier in accordance with clause 20.1.6 within forty (40) Days of the original Independent Certifier's appointment being terminated, then either City Council and the Contractor may refer the matter for determination under the Dispute Resolution Procedure.

## **20.2 Issue of Certificate of Availability**

20.2.1 The City Council and the Contractor shall procure that the Independent Certifier certifies Works which have achieved within each Month the relevant Certification Standards on or before the 30th of such Month.

20.2.2 The City Council and the Contractor shall procure that where the Independent Certifier considers that the relevant Certification Standards have been satisfied, and that all outstanding Works detailed in the Snagging List can be carried out within twenty (20) Working Days of the issue of the Certificate of Availability the Independent Certifier will issue the relevant Certificate of Availability with copies to the City Council and the Contractor.

## **20.3 Effect of confirmation of a Certificate of Availability**

20.3.1 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 that Certificate of Availability as set out in the Independent Certifier's Deed of Appointment.

20.3.2 The issue of a Certificate of Availability by the Independent Certifier 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 5 (*Payment Mechanism*).

20.3.3 As between the City Council and the Contractor a Certificate of Availability, in respect of any Works shall be conclusive as to whether the relevant Works have been completed in accordance with clause 20.2 (*Issue of Certificate of Availability*) and that such Works (including any Dwellings within such Works) have (where relevant) reached the relevant Certification Standards, at the date of such Certificate of Availability.

20.3.4 A Certificate of Availability cannot be revoked for any reason after it has been issued.

20.3.5 At the end of each Contract Month the Contractor shall provide to the City Council on the report and invoice relating to such Contract Month the dates of issue of the Certificates of Availability during that Contract Month.

20.3.6 Where a Certificate of Availability has been issued in respect of any Works (including any Dwellings within such Works) in a Contract Month the Unitary Charge for the Contract Month next after the current Contract Month shall be increased in accordance with the terms of schedule 5 (*Payment Mechanism*).

## 20.4 Snagging Items

In the event that a Certificate of Availability for a Dwelling or a Property is subject to Snagging Items:

20.4.1 the Independent Certifier shall within five (5) Working Days of the issue of the relevant Certificate of Availability issue to the Contractor and the City Council a list of the relevant Snagging Items for that Dwelling or Property ("**Snagging List**"). Within five (5) Working Days of receipt from the Independent Certifier of the Snagging List the Contractor shall provide to the City Council 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 Snagging Item shall be made good within twenty (20) Working 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 20.4 (*Snagging Items*) shall be known as the "**Snagging Programme**"; and

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

## 20.5 **Site Clearance**

The Contractor shall, as soon as is reasonably practicable following issue of an Certificate of Availability for a Dwelling or a Property, clear from the relevant Project Site, Dwelling and Property to the reasonable

satisfaction of the City Council all temporary structures, rubbish and all building and surplus material and equipment and in default the City Council 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 City Council shall not be entitled to exercise such right for a period of five (5) Working Days following the date of the Certificate of Availability for that Dwelling or Property.

#### **20.6 Deemed Refurbishment Completion**

Where by the Planned Full Services Commencement Date (Refurbishment) a Certificate of Availability Rented (Full Standard) shall not have been issued in relation to a Refurbishment Dwelling as a consequence of a Works or Services Denial Event a Certificate of Availability Rented (Full Standard) shall be issued in respect of such Dwelling notwithstanding that the relevant Availability Standard shall not have been achieved.

#### **20.7 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 20.6 (*Deemed Refurbishment Completion*) in accordance with the Access Protocol.

#### **20.8 Withdrawal of Dwelling**

The City Council may elect to withdraw a Rented Dwelling from the Project if, by the Planned Full Services Commencement Date (Refurbishment), the Contractor has been unable to satisfy the Availability Standards Rented (Full) in relation to that Rented Dwelling as a consequence of a Works or Services Denial Event and clause 28.6 (*Change to Numbers of Dwellings by Tenure*) shall apply to that Dwelling as if that Dwelling had been the subject of a CNDT.

## 20.9 Milestones

20.9.1 On each Milestone Date the City Council will assess:

20.9.1.1 whether the cumulative number of New Build Dwellings which have achieved the Full Availability Standard meets or exceeds the New Build Milestone specified for such Milestone Date and if such New Build Milestone has not been achieved, a Default Termination Point will be awarded in respect of such failed New Build Milestone;

20.9.1.2 whether the cumulative number of Refurbishment Dwellings which have achieved the Full Availability Standard meets or exceeds the Refurbishment Milestone specified for such Milestone Date and if such Refurbishment Milestone has not been achieved, a Default Termination Point will be awarded in respect of such failed Refurbishment Milestone.

20.9.2 Where a Default Termination Point has been awarded and not removed in respect of a failed Milestone, then at each following Milestone Date, the City Council shall carry out a further assessment of whether such Milestone has now been satisfied (until such Milestone is satisfied) and:

20.9.2.1 where such Milestone has been satisfied, the Default Termination Point in respect of such Milestone shall be removed (notwithstanding that a further Default Termination Point may be awarded pursuant to clause 20.9.1 in respect of a failure to meet the Milestone relevant to the current Milestone Date); and

20.9.2.2 where such Milestone has not been satisfied, the existing Default Termination Point shall subsist (and for the avoidance of doubt a further Default Termination Point shall be awarded pursuant to clause 20.9.1 in respect of the failure to meet the Milestone relevant to the current Milestone Date).

## **21. DELAYS**

### **21.1 Indemnity**

If the Works to be undertaken to any Properties or Project Sites to achieve the relevant Certification Standards (including Demolition Works and Environmental Works) are not, after such Works to such Properties or Project Sites have commenced, completed within a reasonable period, having regard to the nature of the Works required to make the Property or Project Site meet the relevant Certification Standard and subject 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, City Council Change, Change in Law or Contractor Change or any Services Commencement Date has not occurred by the Planned Services Commencement Date for such Property or Project Site, the Contractor shall:

21.1.1 not used;

21.1.2 not used;

21.1.3 pay or allow the City Council liquidated and ascertained damages at the rate of:

21.1.3.1 fifteen (£15) per Dwelling per week (or part thereof) in relation to any failure to achieve a Planned Full Services Commencement Date (Refurbishment); and

21.1.3.2 fifteen (£15) per Dwelling per week (or part thereof) in relation to any failure to achieve a Planned Full Services Commencement Date (New Build),

until the relevant Services Commencement is achieved or Certificate of Availability issued (as the case may be). For the purposes of clause 21.1.3 only, the reference to "week" shall mean any seven day period.

21.1.4 not be required to pay liquidated and ascertained damages, or be liable to the City Council, other than by way of the Contractor's continuing obligations to carry out and complete the Works, as set out in this Agreement:

21.1.4.1 in relation to delays to completion of any Demolition Work; or

21.1.4.2 in relation to delays to completion of any Environmental Works.

## **PART 4 – THE SERVICES**

### **22. SERVICES OBLIGATIONS**

#### **22.1 Commencement and duration of the Services**

22.1.1 In accordance with the approval dated on or about the date of this Agreement given by the Secretary of State under Section 27 ("**Section 27 Consent**") the City Council agrees that the Contractor shall exercise such of the City Council's housing management functions as set out in schedule 17 (*Housing Management Functions*) in relation to the Dwellings and Properties and such other housing management functions as shall be necessary to enable the Contractor properly to perform its obligations under this Agreement ("**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:

- 22.1.1.1 lettings;
- 22.1.1.2 income collection and debt recovery;
- 22.1.1.3 tenancy management;
- 22.1.1.4 neighbourhood management;
- 22.1.1.5 rent or service charge setting policies;
- 22.1.1.6 allocation of Tenants to Dwellings;
- 22.1.1.7 amendment of the City Council's Policies or the City Council's Protocols; and
- 22.1.1.8 variations to the Tenancies or the Leaseholder's Leases,

all of which are reserved to the City Council.

22.1.2 Subject to clause 82 (*Sole Remedy and Common Law Rights*) the Contractor shall provide the Services from the relevant Services Commencement Date for the duration of the Contract Period ("**Services Period**") so that the Services are provided in accordance with:

- 22.1.2.1 this Agreement;
- 22.1.2.2 all applicable Legislation;
- 22.1.2.3 the landlord's obligations contained or referred to in the Tenancies and the Leaseholder's Leases;
- 22.1.2.4 the Output Specification;
- 22.1.2.5 the City Council's Policies; and



22.1.2.6 the Service Delivery Plan(s);

22.1.2.7 Good Industry Practice

provided that in the event of conflict or inconsistency, precedence shall be given in the order listed above (with 22.1.2.1 being the highest priority; and 22.1.2.7 being the lowest priority).

22.1.3 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.

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

22.1.5 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*).

## 22.2 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 City Council in writing of that fact and shall obtain the written approval of the City Council to deal with such inconsistency or conflict and after approval by the City Council, the Output Specification shall be amended accordingly and any amendment shall be made without adjustment to the Unitary Charge. The City Council 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.

### **22.3 Changes to the Services**

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

### **22.4 Service Delivery Plans**

The Contractor shall provide to the City Council 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.

## **23. CONDITION OF THE PROPERTIES**

### **23.1 Maintenance**

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

- 23.1.1 the Services are continuously available in accordance with the Output Specification;
- 23.1.2 it can maintain the design intention of the Dwellings and Properties to achieve their full working life as set out in the Output Specification for the duration of the Contract Period;
- 23.1.3 the Dwellings and Properties are kept in good structural and decorative order (subject to fair wear and tear) in accordance with the Output Specification; and
- 23.1.4 the Dwellings and Properties are handed back to the City Council on the Expiry Date in a condition complying with the Handback Standard.

## 23.2 Surveys

- 23.2.1 If the City Council reasonably believes that the Contractor is in breach of its obligations under clause 23.1 (*Maintenance*), then it may carry out or procure the carrying out of a survey of the Dwellings and/or Properties to assess whether the Dwellings and/or Properties have been and are being maintained by the Contractor in accordance with its obligations under clause 23.1 (*Maintenance*). This right may be exercised with the consent of the Tenants and (if necessary) Leaseholders and may not be exercised more often than once every two (2) years in respect of any Dwelling (save where a Tenant or Leaseholder has requested that the City Council inspect the Dwelling and/or Property, or such survey is otherwise required for the purposes of the Litigation Protocol).
- 23.2.2 The City Council shall notify the Contractor in writing a minimum of ten (10) Working Days in advance of the date it wishes to carry out the survey. The City Council 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 (5) Working 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.
- 23.2.3 When carrying out any survey, the City Council 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 23.2.4 applies, be borne by the City Council. The Contractor shall give the City Council (free of charge) any reasonable assistance required by the City Council during the carrying out of any survey.

23.2.4 If the survey shows that the Contractor has not complied or is not complying with its obligations under clause 23.1 (*Maintenance*), the City Council shall:

23.2.4.1 notify the Contractor of the standard that the condition of the Dwellings and/or Properties should be in to comply with its obligations under clause 23.1 (*Maintenance*);

23.2.4.2 specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and

23.2.4.3 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 City Council in relation to the survey.

23.2.5 The Contractor shall carry out such rectification and/or maintenance work within the period specified by the City Council and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

### **23.3 Life Cycle Works and Planned Maintenance**

23.3.1 Without derogation from clause 23.1 (*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.

23.3.2 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 (including any period after the expiry of the Contract Period to the extent that it may be relevant for the purposes of determining the Handback

Standard) 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.

23.3.3 In addition the Contractor shall:

23.3.3.1 no later than 31 January in each Contract Year give the City Council 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;
- (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;

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

23.3.3.3 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.

23.3.4 The City Council 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.

## **24. HAZARDOUS SUBSTANCES**

### **24.1 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 City Council of all such materials being used or stored at the Project Sites and shall comply with any other reasonable requirement of the City Council in respect of such materials and equipment.

## **25. EMERGENCIES**

### **25.1 Additional or Alternative Services**

If an Emergency arises during the Contract Period which cannot be dealt with by performance of the Services, the City Council 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 City Council to ensure that the Emergency is dealt with and normal operation of the relevant Dwellings and/or Property 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.

### **25.2 Costs**

The cost incurred by the Contractor of any additional or alternative services provided to the City Council under clause 25.1 (*Additional or Alternative Services*) or any revenue lost by the Contractor shall be borne by the City Council and paid against the Contractor's invoice in accordance with clause 33 (*Payment Provisions*). The Contractor shall be put in a position no better and 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.

### **25.3 Public Safety Incident**

25.3.1 Following the occurrence of a Public Safety Incident, the Contractor shall as soon as reasonably practicable and in any case, within twenty four (24) hours, provide the City Council with written proposals as to how such incident will be remedied and prevented from reoccurring.

25.3.2 The City Council may, in its absolute discretion, accept or reject such proposals. If such proposals do not involve the termination or the replacement of the offending Sub-Contractor or sub-sub-contractor the City Council may require that the relevant Sub-Contractor's or sub-sub-contractor's involvement in the Works and/or Services is terminated and that a replacement is appointed in accordance with clause 65 (*Assignment and Sub-Contracting*) within ninety (90) Working Days of the occurrence of the Public Safety Incident.

## **26. PERFORMANCE MONITORING**

### **26.1 Contractor Monitoring**

The Contractor shall monitor its performance in the delivery of the Services in accordance with the procedure set out in part 8 of schedule 5 (*Payment Mechanism*).

### **26.2 City Council Monitoring**

The City Council 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 City Council in such an exercise. The City Council shall be entitled to notify the Contractor of the outcome of the performance monitoring exercise, and the Contractor shall have due regard to the City Council's comments in relation to the future provision of the Services.

### **26.3 Erroneous Monitoring Reports**

Without prejudice to the City Council's rights under clause 37.4 (*Termination on Contractor Default*) and to any other express rights under this Agreement, where the Contractor has been found to:

26.3.1 be fraudulent in the submission of monitoring reports or claims for payment under clause 33 (*Payment Provisions*); or

26.3.2 have submitted at least two (2) erroneous monitoring reports, within a three (3) month period,

the City Council may by notice to the Contractor increase the level of its monitoring of the Contractor, or (at the City Council'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 City Council that it will perform (and is capable of performing) its obligations under this Agreement.

### **26.4 Remedy of Erroneous Monitoring Reports**

For the purposes of clause 26.3, the City Council acknowledges that if the Contractor has otherwise failed to have demonstrated to the



reasonable satisfaction of the City Council as required by clause 26.3 but:

26.4.1 if the Contractor has removed the person or persons responsible for the fraudulent reporting; or

26.4.2 (under clause 26.3.2), if in the following three (3) month period following the City Council 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.

## 26.5 Indemnity

If the City Council issues a notice under clause 26.3 (*Erroneous Monitoring Reports*), the Contractor shall bear its own costs and indemnify and keep the City Council indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of the City Council in relation to such increased level of monitoring arising due to circumstances under clause 26.3 (*Erroneous Monitoring Reports*).

## 27. MARKET TESTING

### 27.1 Market Testing Review Dates

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

Element of Service	Market Testing Review Date
Grounds maintenance  Cleaning  Caretaking	The first Market Testing Review Date shall be the date which is [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

**27.2 Conditions for Market Testing**

The Contractor shall undertake Market Testing on any Market Testing Review Date.

**27.3 Market Testing Procedure**

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

27.3.1 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:

27.3.1.1 the appropriate means of advertising the Market Tested Services required and the means of identifying prospective tenderers;

27.3.1.2 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);

27.3.1.3 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 ("**Tender Documents**"); and

27.3.1.4 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.

27.3.2 No later than thirty (30) Working Days before each Market Testing Review Date, the Contractor shall prepare and deliver to the City Council a draft market testing proposal ("**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 27.3.1.4, 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.

27.3.3 If the parties are unable to agree any of the matters set out in the Market Testing Proposal or if the City Council reasonably considers that the Contractor has made a material error or omission in the Market Testing Proposal, the City Council may (subject to clause 27.3.4 (*Market Testing Procedure*)) amend the provisions of the Market Testing Proposal to accord with statutory and government requirements at its sole discretion.

27.3.4 The Contractor may upon receiving any amendments made by the City Council in accordance with clause 27.3.3 (*Market Testing Procedure*) refer the matter to the Dispute Resolution Procedure.

27.3.5 The Contractor shall manage the Market Testing tendering process in accordance with the Market Testing Proposal agreed or determined in accordance with this clause 27.3 (*Market Testing Procedure*).

27.3.6 The Contractor shall bear all of its own costs, fees and expenses associated with the Market Testing.

27.3.7 The Contractor shall provide to the City Council as soon as reasonably practicable a copy of the Tender Documents and each response to the Tender Documents.

27.3.8 Subject to clause 27.3 (*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 City Council, which tender to select, if any, in respect of each relevant Market Tested Services.

27.3.9 The Contractor shall select:

27.3.9.1 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

27.3.9.2 in respect of tenders for the provision of more than one (1) Market Tested Service, the most economically advantageous tender in respect of the provision of those Market Tested Services,

provided that nothing in this clause 27.3.9 (*Market Testing Procedure*) shall oblige the Contractor to accept the lowest tender.

27.3.10 Any dispute under clause 27.3.8 (*Market Testing Procedure*) shall be determined in accordance with the Dispute Resolution Procedure.

27.3.11 The City Council 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.

## 27.4 **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 27 (*Market Testing*) in accordance with clause 67 (*Financial Adjustments*)).

## 28. HOUSING PROVISIONS

### 28.1 Leaseholders

28.1.1 The City Council agrees that the Contractor shall exercise its functions in relation to the discharge of the City Council's obligations under the Leaseholder's Leases including the procuring of the carrying out of the Works and the Services necessary to ensure compliance by the City Council with its covenants in the Leaseholder's Leases. Without prejudice to the Contractor's obligations under clause 28.1.3, the City Council will undertake consultations with the Leaseholders under section 20 of the Landlord and Tenant Act 1985 (as amended) and the Contractor will promptly provide to the City Council such information as may be in the Contractor's possession that the City Council reasonably requires for the purposes of such consultation.

28.1.2 The Contractor shall in exercising the functions referred to in clause 28.1.1 (*Leaseholders*) ensure:

28.1.2.1 that the Works are carried out and the Services are provided as are necessary to comply with the landlord's covenants in the Leaseholder's Leases;

28.1.2.2 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 the Works and providing the Services; and

28.1.2.3 that the Works and Services are phased to ensure the full cost of the Works and Services potentially recoverable under terms of the Leaseholder's Leases can be lawfully recovered from Leaseholders

provided that where such full cost is not recoverable the City Council shall either:

- (a) waive the Contractor's obligations pursuant to this clause 28.1.2.3 to ensure full recovery and require the Contractor to fully comply with the Output Specification; or
- (b) pursue full recovery and grant such relief as shall be reasonable in the circumstances to the Contractor as a consequence of such compliance.

28.1.3 The Contractor shall comply with its obligations under the Output Specification in respect of leaseholder consultation and in relation to a relevant service charge period under a Leaseholder's Lease and not less than ten (10) Working Days prior to undertaking any Works or Services to a Leasehold Dwelling notify the City Council of the:

28.1.3.1 nature of the Works and/or Services to be undertaken to the Leasehold Dwelling to satisfy the Output Specification ("**Proposed Leaseholder Works**");

28.1.3.2 estimate of the proposed cost of the Proposed Leaseholder Works which will be recoverable from the Leaseholder occupying that Leasehold Dwelling; and

28.1.3.3 amount of the estimated Irrecoverable Leaseholder Costs.

28.1.4 The Contractor shall following completion of the Proposed Leaseholder Works in relation to each Leasehold Dwelling notify the City Council of the:

- 28.1.4.1 actual cost of the Proposed Leaseholder Works;
- 28.1.4.2 actual cost of the Proposed Leaseholder Works which will be recoverable from the Leaseholder ("**Recoverable Leaseholder Costs**");
- 28.1.4.3 the actual amount of Irrecoverable Leaseholder Costs; and
- 28.1.4.4 any information reasonably required by the City Council to assist in the recovery of the costs of such Proposed Leaseholder Works from the relevant Leaseholder.

28.1.5 The Contractor shall indemnify the City Council against the direct cost of any Irrecoverable Leaseholder cost to the extent that such costs are irrecoverable from a Leaseholder (including the costs that could not be recovered from the Leaseholder and the City Council's reasonable costs of recovery) as a consequence of the Contractor failing to comply with the provisions of this clause 28.1 (*Leaseholders*), and the provisions of clauses 58.6 (*Responsibility for Related Parties*) to 58.10 (*Mitigation*) shall apply, mutatis mutandis, in respect of this clause 28.1.5

28.1.6 The Contractor shall provide insurance cover for Leasehold Dwellings for each Contract Year in accordance with clause 59 (*Insurance*).

## 28.2 Management Agreements

28.2.1 In accordance with the Section 27 Consent, the City Council agrees that the Contractor shall exercise the Housing Management Functions in accordance with clause 22.1.1.



28.2.2 The City Council 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 and/or Properties 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).

28.2.3 Notwithstanding clauses 27 (*Market Testing*) and 65.3 (*Assignment and Sub-Contracting*) but subject to clause 28.2.5, the approval of the City Council (such approval not to be unreasonably withheld or delayed) and of the Secretary of State will be required for:

28.2.3.1 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;

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

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

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

28.2.4 As stipulated by the Secretary of State in the Section 27 Consent the moratorium period for the purposes of Section 27 shall be six (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 ("**Moratorium Period**").

28.2.5 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 City Council (such approval not to be unreasonably withheld or delayed).

28.2.6 No later than five (5) Working Days after the termination of any Sub-Agreement where approval of the Secretary of State is required under Section 27, the Contractor shall provide to the City Council a copy of the proposed replacement 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.

28.2.7 The City Council shall within ten (10) Working Days of receipt of the proposed replacement Sub-Agreement and identity of the proposed new Sub-Contractor and other information referred to in clause 28.2.6 commence to carry out the consultation of Tenants in accordance with Section 105 Housing Act 1985 and after the completion of such consultation the City Council shall (provided it has given its approval in accordance with clause 28.2.3) submit an application for the approval for consideration by the Secretary of State.

28.2.8 The City Council shall within ten (10) Working Days of receipt by the City Council of a request for any matter for which an approval of the Secretary of State is required, in accordance with clause 28.2.3 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 City Council (in accordance with Guidance or otherwise) to enable the Secretary of State to consider the grant of an approval and that the City Council has itself given its approval in accordance with clause 28.2.3, the City Council shall submit the request to the Secretary of State.

28.2.9 If by the expiry of the Moratorium Period the Secretary of State has not given an approval to the matters contained in clause 28.2.3 then the City Council 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 28.2 shall re-apply.

28.2.10 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 28.2.3.2 or where the Secretary of State has not (where such has a material adverse effect upon the Sub-Contractor performing of its obligations under the Sub-Agreement) given an approval to the matters contained in clauses 28.2.3.1 to 28.2.3.3 then either the City Council or the Contractor may terminate this Agreement by twenty (20) Working Days' written notice to the other and the City Council shall pay to the Contractor compensation in accordance with the provisions of clauses 42 (*Compensation on Termination for Force Majeure*), 48.1 (*Gross Up Termination Payments*), 48.2 (*Set Off on Termination*) and 49 (*Method of Payment*).

## **28.3 City Council Functions**

### **28.3.1 Tenancy Agreement and Leases**

The City Council shall notify the Contractor where it intends to vary the terms of a Tenancy Agreement or Leaseholder's Lease, and where such variation would have a material effect on the ability of the Contractor to perform the Works or the Services then such a variation to a Tenancy Agreement or Leaseholder's Lease shall be notified to the Contractor as a City Council Change Notice and shall be determined in accordance with the Change Protocol.

## **28.4 Repair and condition of the accommodation**

28.4.1 Each of the Contractor and the City Council shall comply with their respective obligations in the Disrepair Actions Protocol and the Litigation Protocol.

28.4.2 The City Council shall be responsible for all costs in connection with, and shall release and indemnify the Contractor, its Sub-Contractors, its employees, agents and contractors on demand from and against all liability for:

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

28.4.2.2 fines and penalties,

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

28.4.3 The Contractor shall be responsible for all costs in connection with, and shall release and indemnify the City Council, its

employees, agents and contractors on demand from and against all liability for:

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

28.4.3.2 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 Cut Off Date.

28.4.4 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 City Council arising from the Disrepair Action.

## **28.5 Right to buy etc.**

28.5.1 Each of the City Council 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 and shall at the same time provide a copy of the Tenant's notice to that effect.

28.5.2 The Contractor shall at the City Council's written request provide to the City Council (within ten (10) Working Days of receipt of such request) 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 City Council to assess the following:

- 28.5.2.1 the contents of the notice required to satisfy section 125 of the Housing Act 1985;
  - 28.5.2.2 (where applicable) the contents of the notice or notices required to satisfy sections 125A, 125B and 125C of the Housing Act 1985;
  - 28.5.2.3 any other information in the possession or control of the Contractor as is required by the City Council to comply with its duties under the Housing Act 1985; and
  - 28.5.2.4 any information on any proposed Works and Services to the Dwelling and the estimates of the cost of such Works and Services, including any works contained in the current Cyclical Maintenance and Replacement Programme in respect of such Dwelling.
- 28.5.3 The Contractor shall undertake all the steps referred to in clause 28.5.2 in sufficient time to enable the City Council to be able to comply with any time limits imposed on it by or by virtue of Part V of the Housing Act 1985.
- 28.5.4 The Contractor shall keep (and make available to the City Council on written request) written records of those costs attributable to any Dwelling which have been incurred by it on behalf of the City Council 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.

28.5.5 Where pursuant to clause 28.5.1 either the Contractor or the City Council has received a written notice from a Tenant claiming to exercise Right to Buy in respect of a Dwelling, the City Council may serve on the Contractor in respect of such Dwelling a notice ("**Right to Buy Notice**"), specifying:

28.5.5.1 that the Dwelling is subject to a Right to Buy; and

28.5.5.2 any Works or Cyclical Maintenance and Renewal Works in respect of such Dwelling that the City Council will still require the Contractor to carry out, notwithstanding that such Dwelling is subject to Right to Buy,

and the Contractor shall not carry out any Works (or where the Works have already commenced make safe and restore but not carry out any further Works) or any Cyclical Maintenance and Renewal Works in respect of such Dwelling (save for the works specified in the Right to Buy Notice pursuant to clause 28.5.5.2 and any works required pursuant to the Tenancy Agreement and/or in connection with any statutory responsibilities of the Contractor or the City Council) from the date of the Right to Buy Notice until the earlier of:

28.5.5.3 the date of receipt of a notice from the City Council stating that the Tenant has withdrawn their application for a Right to Buy; or

28.5.5.4 the CNDT Date.

## 28.6 **Changes to Numbers of Dwellings By Tenure**

28.6.1 The City Council may at any time serve a CNDT Notice on the Contractor for any number of Dwellings. The CNDT Notice shall specify:

- 28.6.1.1 each Dwelling that will be the subject of a CNDT;
  - 28.6.1.2 the CNDT Date for each Dwelling specified in the CNDT Notice providing that any such date shall be not less than ten (10) Working Days and not more than forty (40) Working Days after the date of service of the CNDT Notice; and
  - 28.6.1.3 those Dwellings which will become Leasehold Dwellings on the CNDT Date.
- 28.6.2 The City Council may at any time before the CNDT Date specified in a CNDT Notice in respect of a Dwelling vary such notice by removing that Dwelling from the notice or by delaying its CNDT Date.
- 28.6.3 The City Council may at any time before the date specified in a CDNT Notice withdraw that CNDT Notice in its entirety.
- 28.6.4 The Contractor shall (subject to any other provision of this Agreement, including, but not limited to 28.5.5) 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.
- 28.6.5 The Contractor shall:
- 28.6.5.1 where a Dwelling has been withdrawn from or otherwise left the Project, cease to provide the Works and the Services in relation to a particular Dwelling; or
  - 28.6.5.2 where the tenure of a Dwelling has changed provide Works and Services in relation to such Dwelling to reflect its new tenure type,



in each case with effect from the beginning of the CNDT Date.

- 28.6.6 Not earlier than twenty (20) Working Days prior to any anticipated CNDT Date, the City Council shall be entitled to carry out a survey ("**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 City Council shall disregard any defects that would be cured by 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 City Council and Contractor which the Contractor had properly programmed to carry out after the CNDT Date ("**CNDT Standard**"), unless they can be made good by repair.
- 28.6.7 The City Council shall notify the Contractor in writing a minimum of five (5) Working Days prior to the date it wishes to carry out the CNDT Survey. The City Council 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 three (3) Working 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 Services.
- 28.6.8 When carrying out the CNDT Survey, the City Council shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The Contractor without being required to incur additional material expense shall afford the City Council, its servants and agents and authorised representatives free of charge any reasonable assistance required by the City Council in carrying out the

CNDT Survey. The cost of the CNDT Survey shall be borne by the City Council.

28.6.9 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 City Council may:

either:

28.6.9.1 notify the Contractor of the rectification work which is required to bring the condition of the relevant Dwelling to the CNDT Standard;

28.6.9.2 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

28.6.9.3 recover the cost of the survey from the Contractor by means of a deduction from the next payment of the Unitary Charge; or

28.6.9.4 the City Council may at its absolute discretion require the Contractor to pay to the City Council within ten (10) Working 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 28.6.9.1 if they were to be carried out by a third party as soon as reasonably practicable after the relevant CNDT Date.

28.6.10 If so required by the City Council, the Contractor shall carry out the rectification work referred to in clause 28.6.9.1 to the City Council's reasonable standard within the period specified in

clause 28.6.9.2 and any costs the Contractor incurs in carrying out such rectification and/or maintenance work shall be at its expense.

28.6.11 If and to the extent that the Contractor fails to carry out the rectification work in accordance with clause 28.6.9.1, the City Council 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.

28.6.12 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 City Council to procure the completion of such rectification work on or prior to the relevant CDNT Date, the Contractor shall pay to the City Council within ten (10) Working 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 28.6.9.1 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 under this Agreement to carry out any such rectification and/or maintenance work after the relevant CNDT Date.

28.6.13 Where a Rented Dwelling has become a Leasehold Dwelling the applicable Full Annual Leasehold Dwelling Charge (and where applicable for the extent of the Interim Services Period the Interim Annual Leasehold Dwelling Charge) for Leasehold Dwellings calculated by reference to paragraph 2.9 of part 2 of schedule 5 (*Payment Mechanism*) will apply from the date upon

which the Rented Dwelling became a Leasehold Dwelling and where the Dwelling is subject to a disposal of the freehold the applicable Full Annual Rented Dwelling Charge (and where applicable for the extent of the Interim Services Period the Interim Annual Rented Dwelling Charge) for Rented Dwellings or the applicable Full Annual Leasehold Dwelling Charge (and where applicable for the extent of the Interim Services Period the Interim Annual Leasehold Dwelling Charge) for Leasehold Dwellings as the case may be shall cease to apply from the date of completion of the freehold disposal.

28.6.14 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:

28.6.14.1 the CNDT Model shall be adjusted to reflect the actual rate of inflation (measured by reference to RPIX) since the last Review Date;

28.6.14.2 the "**Relevant Part of the Unitary Charge**" (as referred to in clause 28.6.14.3 and clause 28.6.16.1) shall be:

- (a) where a Rented Dwelling has become a Leasehold Dwelling, during the Interim Services Period the difference between the applicable Interim Services Dwelling Charge for Rented Dwellings and the applicable Interim Services Dwelling Charge for Leasehold Dwellings;
- (b) where a Rented Dwelling has become a Leasehold Dwelling during the Full Services Period, the difference between the applicable

Full Services Dwelling Charge for Rented Dwellings and the applicable Full Services Dwelling Charge for Leasehold Dwellings;

- (c) where a Rented Dwelling is subject to a disposal of the freehold during the Interim Services Period, the whole of the applicable Interim Services Dwelling Charge for Rented Dwellings;
- (d) where a Rented Dwelling is subject to a disposal of the freehold, during the Full Services Period the whole of the applicable Full Services Dwelling Charge for Rented Dwellings;
- (e) where a Leasehold Dwelling is subject to a disposal of the freehold during the Interim Services Period, the whole of the applicable Interim Services Dwelling Charge for Leasehold Dwellings; and
- (f) where a Leasehold Dwelling is subject to a disposal of the freehold, during the Full Services Period the whole of the applicable Full Services Dwelling Charge for Leasehold Dwellings;

28.6.14.3 on each CNDT Adjustment Date the CNDT Model shall be run to determine the following in relation to each Dwelling which has been the subject of CNDT to be calculated from the relevant CNDT Date for that Dwelling:

- (a) the Relevant Part of the Unitary Charge shall be reduced to reflect the savings in Variable Costs and Semi-Variable Costs only as shown in the CNDT Model;
- (b) when the relevant number of Dwellings which are subject of CNDT attains the number of Total Rental to Leasehold or Total Rented to Freehold or Total Leasehold to Freehold as applicable in each case as shown in the CNDT Model the reduction in the Relevant Part of the Unitary Charge shall, in respect of Semi-Variable Costs, in respect of each "step", reflect the level of savings shown in the CNDT Model; and
- (c) the Unitary Charge shall be reduced to reflect the relevant part of the costs, as agreed by the Contractor and the City Council within the CNDT Model as contained in the CNDT Model, of those component parts of the Works which have not commenced on the CNDT Date. Where the Contractor is required to make an IWCS payment to the City Council such payment shall be made the date immediately following the Refurbishment Works Completion Date;

28.6.14.4 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:

CNDT Compensation = RPUC – (VCS + SVCS + 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 28.6.14.2;

**VCS** are the savings in Variable Costs calculated in accordance with clause 28.6.14.3(a);

**SVCS** are the savings in Semi-Variable Costs calculated in accordance with clauses 28.6.14.3(b) and 28.6.14.3(c); and

**IWCS** are the savings in the costs of the Works in accordance with clause 28.6.14.3(c).

28.6.15 The reduction of the Unitary Charge and the payment of the CNDT Compensation shall commence from the month following the CNDT Adjustment Date.

28.6.16 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:

28.6.16.1 on each CNDT Review Date, the CNDT Model shall be run to determine the following in relation to each Dwelling which has been the subject of CNDT to be calculated from the previous CNDT Review Date (or in the case of the first CNDT Review Date from the CNDT Date) for that Dwelling:

- (a) the Relevant Part of the Unitary Charge shall be reduced to reflect the appropriate level of savings in Variable Costs and Semi-Variable Costs as shown in the CNDT Model;
- (b) when the relevant number of Dwellings which are the subject of CNDT attains the number of Total Rental to Leasehold or Total Rented to Freehold as applicable in each case as shown in the CNDT Model the reduction in the Relevant Part of the Unitary Charge shall, in respect of Semi-Variable Costs, in respect of each "step" reflect the level of the savings shown in the relevant table of the CNDT Model.

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

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

Where:

**CNDT Compensation** is the amount of CNDT Compensation for a Dwelling;

**RPUC** is the Relevant Part of the Unitary Charge defined in clause 28.6.14.2;

**VCS** are the savings in Variable Costs calculated in accordance with clause 28.6.16.1(a); and

**SVCS** are the savings in Semi-Variable Costs calculated in accordance with clauses 28.6.16.1(a) and 28.6.16.1(b).



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

28.6.18 Any dispute relating to the amount of CNDT Compensation payable shall be resolved without prejudice to either party's rights in clause 62 (*Dispute Resolution*) in accordance with the relevant calculations set out in the Base Case.

## 28.7 Tenants Improvements

28.7.1 The City Council and the Contractor shall make arrangements to ensure that the City Council shall receive all requests from:

28.7.1.1 Tenants to exercise their Right to Carry Out Improvements; and

28.7.1.2 from Leaseholders to carry out improvements pursuant to their Leaseholder's Lease.

28.7.2 Both parties shall at all times comply with their respective obligations in the Tenant Improvements Protocol and Tenant Waiver Protocol.

28.7.3 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's Improvements unless any failure to maintain or otherwise to carry out any Services or Works in relation to Tenant's Improvements would put the City Council or City Council Related Party or the Contractor or any Contractor Related Party in breach of or contravene:

28.7.3.1 any Legislation or the common law;

28.7.3.2 the landlord's obligations relating to that Tenant or Leaseholder; or

28.7.3.3 the Availability Standards Rented (Initial),

and then only to the extent required by the matters referred to in clauses 28.7.3.1 to 28.7.3.3 (inclusive).

28.7.4 The City Council shall on or prior to the Initial Services Commencement Date (Refurbishment) provide the Contractor with a list of Tenant's Improvements that have been approved by the City Council since the date of the Stock Condition Survey ("**Prior Approved Tenant Improvements**").

28.7.5 The City Council 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 28.7.4) to the extent such Losses are attributable to a failure by the City Council 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.

## 28.8 **Right to Manage**

Where the Right to Manage is exercised the City Council shall elect as to which of the Change Protocol or clause 28.6 (*Changes to Numbers of Dwellings By Tenure*) shall apply and shall notify the Contractor of that election.

## 28.9 **Right to Repair**

28.9.1 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 City Council an application for a qualifying repair to be carried out pursuant to Right to Repair.

28.9.2 Where the Contractor is in breach of clause 28.9.1 the City Council shall be entitled to serve a notice upon the Contractor requiring that the Contractor takes such steps reasonably required by the City Council to rectify the breach within such period as the City Council reasonably requires.

28.9.3 If the Contractor fails to comply with the City Council's notice referred to in clause 28.9.2 then the City Council 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.

28.9.4 The Contractor shall indemnify the City Council against any Losses incurred as a result of any failure by the Contractor to comply with clause 28.9.1 or Losses to the City Council resulting from any actions of the City Council under clause 28.9.3.

## **29. TRANSFER OF EMPLOYEES**

### **29.1 Relevant Transfers**

29.1.1 The City Council and the Contractor agree that the following events:

29.1.1.1 the Relevant Service Transfer Date; and

29.1.1.2 any other date on which the identity of a provider (including the City Council) 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 survivor's benefits (save as required under sections 257 and 258 of the Pensions Act 2004). 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.

29.1.2 The City Council shall comply with its 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 City Council and the Contractor shall indemnify the other against any Direct Losses sustained as a result of any breach of this clause 29.1.2 by the party in default save that there shall be no obligation on the City Council to indemnify the Contractor for any breach by the City Council 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.

## **29.2 Offer of Employment**

29.2.1 If TUPE does not apply to any person who is a City Council Existing Employee, the Contractor shall offer to or shall procure the offer by the relevant sub-contractor to each and every such

employee a new contract of employment commencing on the Relevant Service Transfer Date under which the terms and conditions including full continuity of employment shall not differ from those enjoyed immediately prior to the Relevant Service Transfer Date (except insofar as such terms and conditions relate to old age, invalidity and survivors' benefits under an occupational pension scheme (save as required under sections 257 and 258 of the Pensions Act 2004)) and the offer shall be in writing, shall be open to acceptance for a period of not less than ten (10) Working Days and shall be made:

29.2.1.1 if it is believed that TUPE will not apply to a person, not less than ten (10) Working Days before the Relevant Service Transfer Date; or

29.2.1.2 if it is believed that TUPE applies to a person but it is subsequently decided that TUPE does not so apply, as soon as is practicable and in any event no later than ten (10) Working Days after that decision is known to the Contractor.

29.2.2 Where any such offer as referred to in clause 29.2.1 is accepted, the City Council shall indemnify and keep indemnified in full the Contractor on the same terms and conditions as those set out in clauses 29.12.1 and 29.12.2 of this Agreement as if there had been a Relevant Transfer in respect of each and every City Council Existing Employee who has accepted any such offer and the provisions of clauses 29.4 to 29.8 shall apply in the event of any resulting increase or decrease in the Remuneration Costs and Reorganisation Costs.

29.2.3 Where any such offer as referred to in clause 29.2.1 is accepted, the Contractor shall act and shall procure that each

relevant sub-contractor shall act in all respects as if TUPE had applied to each and every City Council Existing Employee who has accepted any such offer and shall comply with clause 30 (*Pensions*) of this Agreement in respect of each and every such employee who was immediately before the Relevant Service Transfer Date a City Council Existing Employee.

29.2.4 For the avoidance of doubt, where any such offer as referred to in clause 29.2.1 is not accepted and TUPE does not apply, the City Council Existing Employee shall remain an employee of the City Council.

### **29.3 Emoluments and Outgoings**

29.3.1 The City Council shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Relevant Service Transfer Date.

29.3.2 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 Relevant Service Transfer Date.

### **29.4 Employment Costs**

- 29.4.1 The City Council has supplied to the Contractor the information, as at the date of this Agreement, which is contained in part 2 of schedule 10 (*Employee Information*) ("**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 City Council and of any sub-contractor of the City Council who it is expected, if they remain in the employment of the City Council or of the sub-contractor of the City Council as the case may be until immediately before the Relevant Service Transfer Date, would be Relevant Employees but the City Council gives no warranty as to the accuracy or completeness of this information.
- 29.4.2 The City Council shall supply to the Contractor an update of the First Employee List at three (3) monthly intervals from the date of this Agreement and an updated list ten (10) Working Days before the Relevant Service Transfer Date. The City Council shall also supply to the Contractor within five (5) Working Days after the Relevant Service Transfer Date information, which was correct as at the Relevant 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**" and where there is more than one Relevant Service Transfer Date the "**Final Employee List**" means each list so prepared in respect of each Service and at each Relevant Service Transfer Date. The City Council 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.
- 29.4.3 Without prejudice to clauses 29.4.1 (*Employment Costs*), 29.4.2 (*Employment Costs*) and 29.11 (*Union Recognition*), the City Council shall or 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 City Council shall:

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

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

29.4.4 The Contractor has provided to the City Council, and the City Council has agreed, the details set out in part 4 of schedule 10 (*Proposed Workforce Information*) which show, in respect of each of the Services, the following information:

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



- 29.4.4.2 the monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the Services. These costs ("**Remuneration Costs**") have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and
- 29.4.4.3 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 ("**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.
- 29.5 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 29.6, 29.7 and 29.8) there shall be a corresponding adjustment to the Unitary Charge to compensate for any such difference.
- 29.6 If the circumstances described in clause 29.5 arise:
- 29.6.1 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

- 29.6.2 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.
- 29.7 In calculating any adjustment to be made to the Unitary Charge pursuant to clause 29.5:
- 29.7.1 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 Relevant 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;
- 29.7.2 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;
- 29.7.3 to avoid doubt any changes in costs which fall to be dealt with under clause 29.5 and which arise from a Change in Law shall be dealt with in accordance with the provisions of clause 29.5 and shall not be taken into account for the purposes of clause 52 (*Change in Law*);
- 29.7.4 no adjustments under clause 29.5 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;

29.7.5 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 Relevant Service Transfer Date shall be dealt with in accordance with clauses 29.3.1, 29.12.1 or 29.12.2) and an appropriate increase in respect of such liabilities of the Contractor which represent ongoing costs;

29.7.6 in order to prevent duplication, no adjustment shall be made under this clause 29.7 if any indemnity given by the City Council under any other provision of this Agreement would apply; and

29.7.7 no adjustments under clause 29.5 (*Employment Costs*) shall be made to the extent that any payment is made to the Contractor or sub-contractor under Regulation 12 of TUPE.

29.8 Either party may propose an adjustment to Unitary Charge pursuant to clause 29.5 by giving not less than ten (10) Working 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 29.5.

29.9 In relation to all matters described in clauses 29.6, and 29.7 the Contractor and the City Council 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.

29.10 The City Council 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 City Council including the Services and to the employees who transfer.

#### **29.11 Union Recognition**

29.11.1 The City Council 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 City Council shall supply to the Contractor no later than five (5) Working Days prior to the Relevant 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 City Council or the relevant sub-contractor before the Relevant Service Transfer Date.

29.11.2 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 City Council's premises.

## 29.12 Indemnities

29.12.1 The City Council 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:

29.12.1.1 a breach by the City Council of its obligations under clause 29.3.1 above;

29.12.1.2 subject to clause 29.12.5 any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee provided that this arises from any act, fault or omission of the City Council in relation to any Transferring 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.

29.12.2 Where any liability in relation to any Transferring Employee, in respect of his or her employment by the City Council or its termination which transfers in whole or part in accordance with TUPE and/or the Directive arises partly as a result of any act or omission occurring on or before the Relevant Service Transfer Date and partly as a result of any act or omission occurring after the Relevant Service Transfer Date, the City Council shall indemnify and keep indemnified in full the Contractor or the

relevant sub-contractor against only such part of the Direct Losses sustained by the Contractor or any sub-contractor in consequence of the liability as is reasonably attributable to the act or omission occurring before the Relevant Service Transfer Date.

29.12.3 The indemnities contained in clause 29.12.1 (*Indemnities*) shall apply as if references in those clauses to any Transferring Employee also included a reference to any Relevant Employee and references to any act, fault or omission of the City Council also included a reference to the relevant third party contractor employer of the Relevant Employee prior to the Relevant Service Transfer Date to the extent that the City Council recovers any sum in respect of the subject matter of those indemnities from such third party contractor under any indemnity or other legal entitlement it has against such third party contractor. The City Council will use all reasonable endeavours to recover any such sums under any such entitlement as in mentioned in this clause 29.12.3 (*Indemnities*);

29.12.4 The Contractor shall indemnify and keep indemnified in full the City Council, and at the City Council'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 Service Provider**") against:

29.12.4.1 all Direct Losses incurred by the City Council or any Future Service Provider in connection with or as a result of any claim or demand against the City Council 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 Relevant Service Transfer Date;

29.12.4.2 all Direct Losses incurred by the City Council or any Future Service Provider in connection with or as a result of a breach by the Contractor of its obligations under clause 29.3.2 above; and

29.12.4.3 all Direct Losses incurred by the City Council 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 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Relevant Service Transfer Date.

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

29.12.5.1 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 Relevant Service Transfer Date as a result of the change in employer and whether such claim arises before or after the Relevant Service Transfer Date;

29.12.5.2 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 Employees' 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 Relevant Service Transfer Date as a result of any such proposed changes or measures and whether such claim arises before or after the Relevant Service Transfer Date; and

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

29.12.6 For the avoidance of doubt, the indemnities in clauses 29.12.4 and 29.12.5 shall not apply in respect of any sum for which the City Council is to indemnify the Contractor or a relevant sub-



contractor pursuant to clause 29.12.1 or as a result of any adjustment to the Unitary Charge in accordance with clause 29.5 or to the extent that the claim arises from a wrongful act or omission of the City Council.

29.12.7 Clause 58.8 (*Conduct of Claims*) of this Agreement shall apply where any claim is made in respect of the indemnities given under clause 29.12.

### 29.13 **Provision of Details and Indemnity**

The Contractor shall immediately upon request by the City Council provide to the City Council 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 City Council against all Direct Losses resulting from any failure by the Contractor to comply with this obligation.

### 29.14 **Not Used**

### 29.15 **Retendering**

29.15.1 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 29.16 (*Termination of Agreement*) or as a consequence of the City Council notifying the Contractor of its intention to retender this Agreement:

29.15.1.1 on receiving a request from the City Council provide in respect of any person engaged or employed by the Contractor or any sub-contractor in the provision of the Services ("**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 ("**Retendering Information**");

29.15.1.2 provide the Retendering Information promptly and at no cost to the City Council;

29.15.1.3 notify the City Council forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;

29.15.1.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees;

29.15.1.5 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 City Council's prior written consent (not to be unreasonably withheld or delayed); and

29.15.1.6 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 City Council's prior written consent.

29.15.2 Without prejudice to clauses 29.15.1 and 29.15.3 the Contractor shall provide and shall procure that any sub-contractor shall provide the Employee Liability Information to the City Council 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.

29.15.3 The Contractor shall and shall keep indemnified in full the City Council and at the City Council'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 City Council and/or any Future Service Provider where requested by the City Council 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 City Council and was materially inaccurate or incomplete when originally provided except that this further proviso will not apply to limit the Contractor's indemnity in this clause 29.15.3 in the event that the Contractor had knowledge of such Retendering Information being materially inaccurate or incomplete.

## **29.16 Termination of Agreement**

29.16.1 On the expiry or earlier termination of this Agreement, the City Council 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.

29.16.2 For the purposes of this clause 29.16 (*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 City Council 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 29.16 (*Termination of Agreement*) will apply:

29.16.2.1 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;

29.16.2.2 without prejudice to clause 29.16.2.1, 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 City Council and any Future Service Provider against all Direct Losses incurred by the City Council 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 City Council and any Future Service Provider against all Direct Losses incurred by the City Council 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 City Council or any Future Service Provider.

29.16.3 The City Council shall be entitled to assign the benefit of this indemnity to any Future Service Provider.

**29.17 Offer of Employment on Expiry or Termination**

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

29.17.2 If an offer of employment is made in accordance with clause 29.17.1, 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 30 (*Pensions*) as applied immediately before the expiry or earlier termination of this Agreement including full continuity of employment, except that the City Council 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 29.15 (*Retendering*).

29.17.3 Where any such offer as referred to in clause 29.17.1 is accepted, the Contractor shall indemnify and keep indemnified in full the City Council and/or any Future Service Provider on the same terms and conditions as those set out in clause 29.12 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 29 (*Transfer of*

*Employees*) each and every such employee shall be treated as if they were a Returning Employee.

29.17.4 For the avoidance of doubt, where any such offer as referred to in clause 29.17.1 is not accepted and TUPE does not apply, the employee shall remain an employee of the Contractor or sub-contractor as appropriate.

29.17.5 Where any offer as referred to in clause 29.17.4 is not accepted and TUPE does not apply, the relevant employee shall remain an employee of the Contractor or Sub-Contractor as appropriate and in the event the Contractor or Sub-Contractor as appropriate terminates the employment of any such employee within (3) months of the expiry or earlier termination of this Agreement by reason of redundancy the City Council shall indemnify, and shall keep indemnified in full, the Contractor (for itself and for the benefit of each relevant Sub-Contractor) against all Employee Costs incurred by the Contractor or any relevant Sub-Contractor in connection with or as a result of any such termination of employment, but only to the extent that such Employee Costs are not recovered through the payment of Sub-contractor Breakage Costs pursuant to this Agreement.

#### **29.18 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 29 (*Transfer of Employees*), 30 (*Pensions*), and 31 (*Employees – General*) and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify and keep the City Council indemnified in full against all Direct Losses, incurred or by the City Council 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.

## **30. PENSIONS**

### **30.1 Contractor to Become an Admission Body**

30.1.1 Where the Contractor or a sub-contractor employs any Eligible Employees from a Relevant Transfer Date it shall offer those Eligible Employees membership of the LGPS and the Contractor shall procure that it and/or each relevant sub-contractor shall become an Admission Body.

30.1.2 The Contractor shall before the Relevant Transfer Date execute and procure that each relevant sub-contractor executes a Contractor Admission Agreement which will have effect from and including the Relevant Transfer Date.

30.1.3 Having regard to the provisions of clause 37 (*Termination of this Agreement*) entitling the City Council to terminate this Agreement for breach of this clause 30.1 (*Contractor to Become an Admission Body*), the City Council agrees that any:

30.1.3.1 act or omission of the City Council;

30.1.3.2 act or omission of the GAD;

30.1.3.3 act or omission of the Administering Authority; or

30.1.3.4 change to the LGPS Regulations,

which causes delay or failure on the part of the Contractor or a sub-contractor to comply with its obligations under this clause 30.1 shall not be construed as causing the Contractor to be in breach of this clause 30.1.



### 30.2 Contractor Contribution Rate

[REDACTED]

[REDACTED]

[REDACTED]

### 30.3 Contractor Admission Agreement

The City Council shall before the Relevant Service Transfer Date execute each of the Contractor Admission Agreements referred to in clause 30.1 (*Contractor to Become an Admission Body*) and shall use reasonable endeavours to ensure that the Administering Authority executes each such Contractor Admission Agreement before the Relevant Service Transfer Date. The Contractor shall not (and shall procure that each relevant sub-contractor shall not) terminate a Contractor Admission Agreement except with the prior consent of the

City Council. If the City Council, by any act or omission, causes any Contractor Admission Agreement to be terminated other than in the circumstances set out at clause 8.3 of that Contractor Admission Agreement, the provisions of clause 30.9.4 shall apply.

#### 30.4 **Funding position of the Fund at start of Contract**

30.4.1 The City Council shall procure that for the purposes of the Contractor Admission Agreement entered into under clause 30.3 above, where any of the Eligible Employees' benefits accrued under the Fund prior to a Relevant Service Transfer Date become liabilities of the Contractor or relevant sub-contractor after that date, the Contractor's or relevant sub-contractor's liability to contribute to the Fund under the Contractor Admission Agreement in respect of such liabilities ("**Contribution Liability**"), will be evaluated by the Administering Authority's Actuary as if a notional transfer of assets has passed from the City Council's notional asset holding in the Fund to that of the Contractor or relevant sub-contractor on the basis set out in 30.4.4 to 30.4.5 (inclusive) below.

30.4.2 The City Council will reimburse the Contractor or relevant sub-contractor for all reasonable costs, liabilities and expenses (including legal expenses) reasonably and necessarily incurred or paid by the Contractor or relevant sub-contractor ("**Reimbursable Liabilities**") due to any failure to evaluate the Contribution Liability as described in clause 30.4.1 above by making a upwards adjustment to the next Monthly Unitary Payment equal to the Reimbursable Liabilities incurred or paid by the Contractor or relevant sub-contractor.

30.4.3 Each provision of this clause 30.4 shall apply to any evaluation of the Contribution Liability by the Administering Authority's

Actuary at any time throughout the duration of the Contractor Admission Agreement and for the purposes of any termination valuation carried out pursuant to the cessation of that Contractor Admission Agreement.

30.4.4 For the purpose of calculating the 'notional transfer' under clause 30.4.1 above, the Contractor or relevant sub-contractor shall be treated as having been notionally credited once, at each Relevant Service Transfer Date, in relation to the Eligible Employees transferring to the Contractor or relevant sub-contractor at that date, with assets equal to the value of the liabilities attributable to the Eligible Employee's pensionable service (or credited pensionable service) which accrued in the LGPS prior to the Relevant Service Transfer Date, calculated in accordance with 30.4.5 below. For the avoidance of doubt, the amount of any component of the notional transfer calculated as at each Relevant Service Transfer Date is fixed as at that date and is not subject to amendment in light of subsequent experience.

30.4.5 For the purpose of determining the amount of assets to be notionally credited, the liabilities referred to in 30.4.1 above shall be valued by the Administering Authority's Actuary using actuarial methods, bases and assumptions consistent with those used by the Administering Authority's Actuary for the purpose of performing the most recent actuarial valuation of the Fund prior to the Relevant Service Transfer Date and adjusted for market conditions at the Relevant Service Transfer Date.

### **30.5 Indemnity for a Breach of the Contractor Admission Agreement**

Without prejudice to the generality of this clause 30 (*Pensions*) but subject to clause 30.15.2, the Contractor hereby indemnifies the City Council and/or any Future Service Provider and, in each case, their

sub-contractors from and against all Direct Losses suffered or incurred by it or them which arise from any breach by the Contractor or any sub-contractor of the terms of the Contractor Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Agreement (howsoever caused).

### **30.6 Indemnity or Bond**

Without prejudice to the generality of the requirements of this clause 30 (*Pensions*), the Contractor shall procure that it and each relevant sub-contractor shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Contractor Admission Agreements.

### **30.7 Right of Set-Off**

The City Council shall have a right to set off against any payments due to the Contractor under this Agreement an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the Administration Regulations) due from the Contractor or from any relevant sub-contractor (as applicable) under the Contractor Admission Agreement.

### **30.8 Contractor Ceases to be an Admission Body**

If the Contractor or any sub-contractor employs any Eligible Employees from a Relevant Transfer Date and:

30.8.1 the City Council, and either the Contractor or any relevant sub-contractor are all of the opinion (acting reasonably) that it is not possible to operate the provisions of clauses 30.1 (*Contractor to Become an Admission Body*) to 30.7 (*Right of Set-Off*) inclusive; or

30.8.2 if for any reason after the Relevant Transfer Date the Contractor or any relevant sub-contractor ceases to be an Admission Body other than on the date of termination or expiry of this Agreement or because it ceases to employ any Eligible Employees,

then the provisions of clauses 30.1 (*Contractor to Become an Admission Body*) to 30.7 (*Right of Set-Off*) inclusive shall not apply (without prejudice to any rights of the City Council under those clauses) and the provisions of 30.9 (*Contractor Scheme*) shall apply.

### 30.9 **Contractor Scheme**

Where this clause 30.9 applies pursuant to clause 30.8, the following shall apply:

30.9.1 the Contractor shall, or shall procure that the relevant sub-contractor shall, not later than the Relevant Transfer Date or as soon as practicable after the Cessation Date (as the case may be) nominate to the City Council in writing the occupational pension scheme or schemes which it proposes shall be the "**Contractor Scheme**" for the purposes of this clause 30.9 (*Contractor Scheme*). Such pension scheme or schemes must be:

30.9.1.1 established within three (3) months prior to the Relevant Transfer Date or Cessation Date (as the case may be) and maintained until any payment to be made under schedule 25 (*Bulk Transfer Terms*) is made;

30.9.1.2 reasonably acceptable to the City Council (such acceptance not to be unreasonably withheld or delayed);

- 30.9.1.3 registered within the meaning of the Finance Act 2004;
  - 30.9.1.4 certified by the GAD as providing benefits which are broadly comparable to those provided by the LGPS at the Relevant Transfer Date.
- 30.9.2 The Contractor undertakes to the City Council (for the benefit of the City Council itself and for the City Council as agent and trustee for the benefit of the Eligible Employees) that it shall and shall procure that any relevant sub-contractor shall procure that:
- 30.9.2.1 the Eligible Employees shall by three (3) months before the Relevant Transfer Date or the Cessation Date (as the case may be) be offered membership of the Contractor Scheme with effect from and including the Relevant Transfer Date or Cessation Date (as the case may be);
  - 30.9.2.2 the Contractor Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) which the GAD shall certify to be broadly comparable to the benefits which the Eligible Employees would have been entitled to under the LGPS had they continued in membership of the LGPS;
  - 30.9.2.3 if the Contractor Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Contractor or relevant sub-contractor. The replacement scheme must comply

with this clause 30.9 (*Contractor Scheme*) as if it were the Contractor Scheme;

30.9.2.4 before the Relevant Transfer Date or Cessation Date (as the case may be) the trustees of the Contractor Scheme shall undertake by deed to the City Council and to the Administering Authority that they shall comply with the provisions of clauses 30.9.1.1 to 30.9.2.3 inclusive, 30.10.1, 30.10.2 and 30.10.4 and schedule 25 (*Bulk Transfer Terms*); and

30.9.2.5 where the Contractor Scheme has not been established at the Relevant Transfer Date or Cessation Date (as the case may be) the Eligible Employees shall be provided with benefits in respect of death-in-service which are no less favourable than the death-in-service benefits provided by the LGPS immediately before the Relevant Transfer Date or Cessation Date (as the case may be). Such benefits will continue to be provided until death-in-service benefits are provided by the Contractor Scheme.

30.9.3 Schedule 25 (*Bulk Transfer Terms*) shall apply in relation to the terms for bulk transfers from the LGPS to the Contractor's Scheme following the Relevant Transfer Date and any subsequent bulk transfers on termination or expiry of this Agreement.

30.9.4 Where this clause 30.9.4 applies pursuant to clause 30.3 then the rate of employer contributions payable by the Contractor and the relevant sub-contractor under the Contractor Scheme or replacement scheme shall be subject to the Contribution Rate of 13.4% and the provisions of clause 30.2 shall apply to

the obligations of the Contractor and the relevant sub-contractor under clauses 30.9.1 to 30.9.3 mutatis mutandis.

### **30.10 Undertaking from the Contractor**

The Contractor undertakes to the City Council (for the benefit of the City Council itself and for the City Council as agent and trustee for the benefit of the Eligible Employees) that:

30.10.1 all information which the City Council or the Administering Authority or their respective professional advisers may reasonably request from the Contractor or any relevant sub-contractor for the administration of the LGPS or concerning any other matters raised in clause 30.9 (*Contractor Scheme*) and 30.10 (*Undertaking from the Contractor*) or schedule 25 (*Bulk Transfer Terms*) shall be supplied to them as expeditiously as possible;

30.10.2 the Contractor shall not and shall procure that any relevant sub-contractor shall not, without the consent in writing of the City Council (which shall only be given subject to the payment by the Contractor or the relevant sub-contractor of such reasonable costs as the City Council or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the City Council a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;

30.10.3 until the Relevant Service Transfer Date, it shall not and shall procure that any relevant sub-contractor shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in clauses 30.1 (*Contractor to Become an Admission Body*) to 30.8 (*Contractor*



*Ceases to be an Admission Body*) inclusive without the consent in writing of the City Council (not to be unreasonably withheld or delayed) and the consent of the Administering Authority;

30.10.4 it shall not and shall procure that any relevant sub-contractor shall not take or omit to take any action which would materially affect the benefits under the LGPS or under the Contractor Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the City Council (not to be unreasonably withheld or delayed) provided that the Contractor and/or such sub-contractor will be so entitled without the requirement of consent to give effect to any pre existing contractual obligations to any Eligible Employees; and

30.10.5 it shall and shall procure that any relevant sub-contractor shall offer any of its Eligible Employees who cease to be engaged in the provision of the Services and thereby cease to be eligible for membership of the LGPS membership of the Contractor Scheme as soon as reasonably practicable after ceasing to be so engaged.

### **30.11 Discretionary Benefits**

The Contractor undertakes to the City Council (for the benefit of the City Council itself and for the City Council as agent and trustee for the benefit of the Eligible Employees) that it shall ensure that:

30.11.1 where the Contractor or a sub-contractor is an Admission Body the Contractor shall and/or shall procure that any relevant sub-contractor shall award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the City Council; and

30.11.2 where the award of benefits in clause 30.11.1 is not permitted under the Compensation Regulations and/or the LGPS, or the Contractor and/or a sub-contractor is not an Admission Body, the Contractor shall and/or shall procure that any sub-contractor shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the Compensation Regulations and/or LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the City Council.

Under clause 30.11.1 and 30.11.2, where such benefits are of a discretionary nature, they shall be awarded on the basis of the City Council's written policy in relation to such benefits at the time of the Relevant Service Transfer Date (which the City Council shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Contractor shall and/or shall procure that any sub-contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

### **30.12 Claims from Eligible Employees or Trade Unions**

The Contractor hereby indemnifies the City Council and/or any Future Service Provider and in each case, their sub-contractors from and against all Direct Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Contractor and/or of any sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:

30.12.1 relate to pension rights in respect of periods of employment on and after the Relevant Service Transfer Date until the date of termination or expiry of this Agreement; or

30.12.2 arise out of the failure of the Contractor and/or any relevant sub-contractor to comply with the provisions of this clause 30 (*Pensions*) before the date of termination or expiry of this Agreement.

### **30.13 Costs from the Contractor Admission Agreement**

The costs of the City Council necessarily and reasonably incurred in connection with the Contractor Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with clause 30.9.1.4 (*Contractor Scheme*) shall be borne by the Contractor.

### **30.14 Transfer to another Employer**

Save on expiry or termination of this Agreement, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Contractor shall and shall procure that any relevant sub-contractor shall:

30.14.1 consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and

30.14.2 procure that the employer to which the Eligible Employees are transferred ("**New Employer**") complies with the provisions of this clause 30 (*Pensions*) provided that references to sub-contractor will become references to the New Employer, references to "**Relevant Service Transfer Date**" will become references to the date of transfer to the New Employer and references to Eligible Employees will become references to the Eligible Employees so transferred to the New Employer.

### **30.15 Pension Issues on Expiry or termination**

30.15.1 The Contractor shall (and shall procure that each relevant sub-contractor shall):

30.15.1.1 maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Contractor or any sub-contractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);

30.15.1.2 promptly provide to the City Council such documents and information mentioned in clause 30.15.1.1 which the City Council or the Administering Authority may reasonably request in advance of the expiry or termination of this Agreement; and

30.15.1.3 fully co-operate (and procure that the trustees of the Contractor's Scheme shall fully co-operate) with the reasonable requests of the City Council or the Administering Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Contractor or any sub-contractor in the provision of the Services on the expiry or termination of this Agreement.

30.15.2 Subject to the Contractor or sub-contractor having paid all contributions due by it or them to the LGPS under the terms of the Admission Agreement and this Agreement, where any amounts are payable by the Contractor or any sub-contractor to the LGPS by virtue of clause 7.2 of the Admission Agreement (revision of rates and adjustments certificate on termination) such amounts shall not be payable by the Contractor or any sub-contractor and instead shall be payable by the City Council on terms to be agreed between the City Council and the

Administering Authority provided that if the Administering Authority demands any such amount under the terms of the Admission Agreement directly from the Contractor or any sub-contractor the City Council shall reimburse such amount on submission of an invoice for such amount by the Contractor or such sub-contractor.

## **31. EMPLOYEES - GENERAL**

### **31.1 Disclosure and Barring Service**

31.1.1 The Contractor shall procure that in respect of all potential staff or persons performing any of the Services or the Refurbishment Works (each a "**Named Employee**") before such employee begins to attend the Project Sites to perform any of the Services or the Refurbishment Works:

31.1.1.1 each Named Employee is questioned as to whether he or she has any Convictions;

31.1.1.2 the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in respect of each Named Employee; and

31.1.1.3 a copy of the results of such check are notified to the City Council.

31.1.2 The Contractor shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Disclosure and Barring Service check, is employed or engaged without the City Council's prior written consent (such consent not to be unreasonably withheld or delayed).

### **31.2 Conduct of Staff**

Whilst engaged at the Project Sites the Contractor shall and shall procure that any sub-contractor shall comply with the City Council's Policies and part 2 of schedule 20 (*Works Procedures - Refurbishment Properties*) relating to the conduct of staff and security arrangements. The City Council (acting reasonably) may:

31.2.1 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 City Council shall cooperate with any disciplinary proceedings and shall be advised in writing of the outcome); or

31.2.2 where the City Council 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).

### 31.3 **Admission to the Project Sites**

The Contractor shall at least twenty (20) Working Days before the date on which the Contractor first carries out any of the Works or provides any of the Services provide the City Council with a written list of the names and addresses of all employees or other persons who it expects may require admission to each 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 City Council may require. The Contractor shall update this information as and when any such individuals are replaced or complemented by others, not less than twenty (20) Working Days before their inclusion.

The decision of the City Council on whether any person is to be refused admission to a Project Site shall be final and conclusive and the City Council shall not be obliged to give reasons for its decision. For the avoidance of doubt, the provisions of this clause 31.3 (*Admission to the Project Sites*) shall not apply to those individuals who shall be required by the Contractor or any sub-contractor to attend on a 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 each Project Site by a member of the Contractor or sub-contractor's staff who has been properly notified to the City Council in accordance with the terms of this clause 31.3.

#### **31.4 Refusal of Admission**

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

#### **31.5 Decision to Refuse Admission**

The decision of the City Council as to whether any person is to be refused admission to the Project Sites pursuant to clause 31.4 (*Refusal of Admission*) shall be final and conclusive. If the City Council declines to give reasons and/or where reasons given are found to be unreasonable for exercising its rights under clauses 31.3 (*Admission to the Project Sites*) and clause 31.4 (*Refusal of Admission*) and clause 31.6 (*Removal from Project Sites*), the City Council 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.

### **31.6 Removal from Project Sites**

The Contractor shall comply with and/or procure compliance with any notice issued by the City Council from time to time requiring the removal from any of the Project Sites of any person employed thereon who in the opinion of the City Council acting reasonably is not acceptable on the grounds of risk to themselves or a City Council Related Party, Tenant or Leaseholder, or property and that such persons shall not be employed again upon the Project without the written consent of the City Council.

### **31.7 Relief from Deductions**

Where the City Council exercises its rights under clause 31 (*Employees – General*) and it can be shown that:

31.7.1 the Contractor or any sub-contractor has acted in accordance with the relevant provisions of this clause 31.7 (*Relief from Deductions*); and

31.7.2 the City Council did not act reasonably in instructing the Contractor not to employ and/or in requesting any removal and/or in refusing admission,

then the City Council 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 31.7 shall only be in respect of those Services in which such person is or would have been engaged.



### 31.8 Resources and Training

The Contractor shall procure that:

31.8.1 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

31.8.2 all staff receive such training and supervision as is necessary to ensure the proper performance of the Services under this Agreement.

### 31.9 Personnel Policies and Procedures

The Contractor shall and 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 recruitment, discipline, grievance, equal opportunities and health and safety). The Contractor shall and shall procure that the terms and implementation of such policies and procedures comply with Legislation and Good Industry 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 City Council.

### 31.10 Operating Manual

31.10.1 The Contractor shall throughout the Services Period maintain and update an operating and maintenance manual setting out the procedures for providing the Services ("**Operating Manual**").

31.10.2 The Contractor shall at the request of the City Council provide the City Council 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 31.10.1.

31.10.3 On termination of this Agreement (howsoever arising including expiry), the Contractor shall within ten (10) Working Days provide a copy of the Operating Manual to the City Council.

### **31.11 Quality Assurance**

31.11.1 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 31.11.2 and 31.11.3 below.

31.11.2 Not later than ten (10) Working Days following the Commencement Date, the Contractor shall submit to the City Council'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.

31.11.3 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 City Council (acting reasonably)) in relation to the Works.

31.11.4 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:

31.11.4.1 ensure the effective operation of and implementation of the aforementioned quality assurance system;

31.11.4.2 audit the aforementioned quality assurance system at regular intervals and report the findings of such audit to the Contractor and the City Council;

31.11.4.3 review the aforementioned quality assurance system at intervals agreed with the City Council to ensure their continued suitability and effectiveness; and

31.11.4.4 liaise with the City Council on all matters relating to quality assurance.

31.11.5 The City Council 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 City Council 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 City Council including providing it with all information and documentation which it reasonably requires in connection with its right under this clause 31.11 (*Quality Assurance*).

## **31.12 Co-operation for Investigation and Security**

31.12.1 The Contractor shall co-operate with any investigation relating to an act of crime or disorder which is carried out by or on behalf of the City Council and:

31.12.1.1 shall use its reasonable endeavours to make its employees (and other Contractor Related Parties) identified by the City Council available to be interviewed by the City Council for the purposes of the investigation; and

31.12.1.2 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 City Council for the purposes of the investigation. The City Council shall have the right to retain copies of any such material for use in connection with the investigation.

31.12.2 The City Council 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.

31.12.3 The Contractor shall comply with the City Council's reasonable reporting requirements relating incidents of crime and disorder to the extent made known to the Contractor.

## **32. INFORMATION TECHNOLOGY**

### **32.1 IT Specification, Policies and Plans**

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

32.1.1 the Output Specification;

32.1.2 the City Council Policies relating to IT operated by the City Council as set out in schedule 13 (*City Council's Policies*) and

any revised or alternative policies and procedures as may be notified in writing to the Contractor by the City Council from time to time;

32.1.3 any IT contingency plan from time to time required and agreed between the parties in accordance with the Output Specification; and

32.1.4 the Handback Standard to the extent that it relates to IT matters.

### **32.1A ICT Protocol**

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

### **32.2 Licences and Assignments from the Contractor to the City Council**

32.2.1 The Contractor hereby grants to the City Council (or shall procure the grant to the City Council of) a perpetual, transferable, non-exclusive, royalty free, irrevocable licence to use, amend, extend or modify the Contractor IT Systems for the purposes of provision of the Works and/or the Services. The City Council shall be permitted to grant sub-licences on the same terms, mutatis mutandis, as those of the licence granted by the Contractor to the City Council under this clause, and the licence granted under this clause shall be transferable to any third parties who assume responsibility for the operation or provision of the Works and/or the Services or any part thereof. The City Council (and its permitted sub-licensees and transferees) shall only be entitled to exercise the rights granted in this clause 32.2.1 in the event of the exercise of the City Council's right of step in pursuant to this Agreement (and then only for the duration of such City Council step in) or as otherwise expressly permitted in this Agreement.

32.2.2 In the event of the exercise of the City Council's step in rights pursuant to this Agreement or as otherwise expressly permitted by this Agreement, the Contractor shall procure for the City Council a non-exclusive, perpetual, irrevocable, royalty free licence to use, amend, extend or modify any third party Intellectual Property Rights for the purpose of maintaining, managing, providing, carrying out and operating the Works and/or the Services (the terms of such to be no less extensive than the licence of which the Contractor has benefit). Such licence shall entitle the City Council to grant sub-licences on the same terms mutatis mutandis as those granted under this clause 32.2.2.

32.2.3 The Contractor hereby grants to the City Council a non-exclusive, non-transferable (subject to clause 32.2.5), royalty-free licence to use and remotely access in accordance with the Output Specification the Contractor IT Systems during the Contract Period in accordance with and for the purposes detailed in the Output Specification including, without limitation, for the purposes of (i) accessing and interrogating the Housing IT Systems Data; and (ii) monitoring, auditing and assessing the performance of the Services; and (iii) for other purposes relating to the City Council's Housing Management Functions.

32.2.4 Notwithstanding the generality of clause 64.3 (*Assignment of Generated Intellectual Property Rights*), and for the avoidance of doubt, the Contractor hereby acknowledges and agrees that the Housing IT Systems Data shall be and shall remain the exclusive property of the City Council 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 Housing IT Systems Data, together with all Intellectual Property Rights and other proprietary rights in and to the same, to the City Council 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 City Council absolutely and undertakes to make available to the City Council such Housing IT Systems Data on demand in the format required by Annex 22 of the Output Specification or as otherwise reasonably agreed between the parties.

32.2.5 The licences and rights granted to the City Council under this clause 32.2 (*Licences and Assignments from the Contractor to the City Council*) shall be transferable to any third parties who assume responsibility for the operation or provision of the Works and/or the Services or any part thereof pursuant to the exercise of the City Council's right of step in under this Agreement or as otherwise expressly permitted in this Agreement.

### **32.3 Licences from the City Council to the Contractor**

The City Council hereby grants to the Contractor a non-exclusive, non-transferable (subject to the remainder of this clause 32.3 (*Licences from the City Council to the Contractor*)), royalty-free licence to use the, the Housing IT Systems 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 Works and/or Services. The Contractor shall be permitted to grant sublicences 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 clause 32.3. The Contractor shall, and shall procure that any Sub-Contractor to whom a sublicense has been granted under this clause 32.3 shall, comply in full with the terms of this Agreement with respect to any such use.

#### **32.4 Copies of licensed materials to be made available to the City Council**

Within twenty (20) Working Days of the receipt by the Contractor of a written request from the City Council, the Contractor shall (insofar as permitted by Legislation, including without limitation the Data Protection Act 1998) promptly deliver to the City Council or to any third party on its behalf all or any data, materials, know how and/or information licensed under clause 32.2 (*Licences and Assignments from the Contractor to the City Council*) and/or which is relevant for the maintenance, management, provision, replacement, carrying out and operation of the Works and/or Services in the Contractor's possession, custody or control or Sub-Contractor and any member of the Professional Team (and/or, in each case, any sub-contractor of the same) in each case at the date of such request, subject to the City Council paying the Contractor's reasonable copying fees. Upon cessation of such licence for whatever reason, the City Council shall forthwith return all such materials so supplied (and any copies made thereof).

#### **32.5 Further Assurance by the Contractor**

The Contractor shall, and shall procure that each Sub-Contractor shall (and shall further use reasonable endeavours to ensure that any other third party shall), if and when necessary as required by the City Council and at the City Council's expense, sign, execute and do all such documents, acts and things as the City Council may reasonably require to fully and effectively enable the City Council to obtain the benefit of the licences (including the right to grant sub-licences) granted under or pursuant to clause 32.2 (*Licences and Assignments from the Contractor to the City Council*).

#### **32.6 Indemnity in Favour of the City Council**

The Contractor shall indemnify the City Council and keep the City Council fully and effectively indemnified against any and all Losses,



which the City Council may sustain or incur or which may be brought or established against the City Council 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 City Council or by any of its permitted sub-licensees of the Contractor's Intellectual Property Rights, the third party Intellectual Property Rights the Contractor IT Systems and/or Housing IT Systems Data in each case in accordance with the terms of the licences granted under clause 32.2 (*Licences and Assignments from the Contractor to the City Council*), infringes any Intellectual Property Rights of any third party, provided always that:

32.6.1 the City Council 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

32.6.2 the Contractor has sole control over the defence of any suit or claim and over all negotiations in relation thereto (and the City Council shall not make or attempt to make any settlement or admit any liability in relation to such suit or claim); and

32.6.3 the City Council, 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 58 (*Indemnities Guarantees and Contractual Claims*) shall not apply to the Contractor's liability under this clause.

## **32.7 Back-up and Security Obligations**

The Contractor shall ensure that all Contractor's Intellectual Property Rights, Housing IT Systems Data, 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 City Council's requirements set out in the Output Specification.

### **32.8 Materials which come into being in the Future**

Where any of the data, documentation or software referred to in this clause 32 (*Information Technology*) has yet to come into existence, the provisions of this clause 32 (*Information Technology*) shall apply to such data, documentation and software immediately upon the same coming into existence.

### **32.9 CCTV**

32.9.1 On or before the Commencement Date, the Contractor shall submit the CCTV Code to the City Council for approval, such CCTV Code to be put in compliance with City Council Policies, the requirement of the Output Specification, Legislation and Good Industry Practice.

32.9.2 The CCTV Code shall include (but shall not be limited to) details (including where relevant details specific to individual Sites) of:

32.9.2.1 how the CCTV Equipment at the Sites will be operated so as to comply with Legislation, Good Industry Practice and the terms of this Agreement;

32.9.2.2 how access to the CCTV Equipment monitoring room (both on and off the Sites) will be controlled;

- 32.9.2.3 the administration and procedures of the CCTV Equipment monitoring room(s);
  - 32.9.2.4 the liaison activities that the Contractor has undertaken and will undertake in connection with the use of the CCTV Equipment (for example with the Tenants, Leaseholders, owners of Adjoining Property, the City Council and the police (including local crime prevention officers));
  - 32.9.2.5 steps taken and to be taken by the Contractor to ensure that the CCTV Equipment is used in a manner that respects the rights of all persons on or about the Sites and Adjoining Properties;
  - 32.9.2.6 the procedures for the making, keeping, controlling, copying and disclosing of recordings from the CCTV Equipment;
  - 32.9.2.7 procedures on the occurrence of an Emergency;
  - 32.9.2.8 response procedures when the CCTV Equipment detects any incident on or in the vicinity of the Sites; and
  - 32.9.2.9 procedures to allow the City Council to have access to material recorded using the CCTV Equipment for any reasonable purpose connected with the exercise of the City Council's functions, to the extent that such access is in compliance with Legislation, Good Industry Practice and the terms of this Agreement; .
- 32.9.3 The Contractor shall operate the CCTV Equipment at the Sites in accordance with the CCTV Code.

32.9.4 The parties shall in good faith update and otherwise agree revisions to the CCTV Code from time to time as maybe necessary to comply with Good Industry Practice, Legislation and as shall otherwise be necessary during the Contract Period.

32.9.5 The Contractor shall not without the prior consent of the City Council (which may be withheld or given subject to conditions at its absolute discretion) publish, disclose, issue or release material recorded using the CCTV Equipment (including any copy of such material or images extract from it). Nothing in this clause 32.9 (CCTV) shall prevent the Contractor from publishing, disclosing, issuing or releasing material if required by any Legislation or guidance or in response to proper and reasonable requests from the police or other emergency services in the event of Emergencies.

## **PART 5 - PAYMENT**

### **33. PAYMENT PROVISIONS**

#### **33.1 Payment of the Unitary Charge**

The City Council shall pay the Contractor the Monthly Unitary Charge in respect of each Payment Period, calculated in accordance with schedule 5 (*Payment Mechanism*).

#### **33.2 Monthly Monitoring Report and Invoice**

On the first Working Day of each Payment Period the Contractor shall deliver to the City Council,

33.2.1 a Monthly Monitoring Report containing for that Payment Period;

- 33.2.1.1 the information set out in part 8 of the Payment Mechanism;
- 33.2.1.2 any adjustments to the Unitary Charge which fall to be made in accordance with clause 67 (*Financial Adjustments*);
- 33.2.1.3 any undisputed amounts owed by either party to the other in accordance with clause 58 (*Indemnities Guarantees and Contractual Claims*);
- 33.2.1.4 any amounts owed to the Contractor by the City Council in accordance with clause 25 (*Emergencies*);
- 33.2.1.5 any amounts owed by the Contractor to the City Council under clause 21 (*Delays*);
- 33.2.1.6 any amounts to be deducted pursuant to clause 41 (*Surveys on Termination and Retention Fund*);
- 33.2.1.7 the Dwellings due to receive a Certificate of Availability in that month;
- 33.2.1.8 the Dwellings due to be subject to a CNDT in that month;
- 33.2.1.9 any amount owed by the Contractor to the City Council carried forward from the previous Payment Period pursuant to clause 33.3.2 which is to be deducted from the amount owed by the City Council; and
- 33.2.1.10 an adjustment taking into account the number of Dwellings anticipated to receive a Certificate of Availability in the previous month, and the number of

Dwellings actually receiving a Certificate of Availability in the previous month, which would have resulted in an underpayment or overpayment in that month by the City Council to the Contractor.

33.2.2 an invoice for the amount (if any) shown by the report for that Payment Period as owing by the City Council to the Contractor and for any VAT payable by the City Council in respect of that amount.

### **33.3 Payment**

33.3.1 Subject to clause 33.5 (*Disputed Amounts*), the City Council shall pay the amount stated in any invoice submitted under clause 33.2.2 (*Monthly Monitoring Report and Invoice*) on the final Working Day of the Payment Period in question, save for the Payment Periods of March or September when the City Council shall pay such amount within twelve (12) Business Days of invoice submission.

33.3.2 Where a report shows a net amount owed by the Contractor to the City Council, the Contractor shall pay that amount to the City Council on the final Working Day of the Payment Period to which the report refers, or, at the option of the City Council, carry forward that amount to the next report in reduction of amounts which would otherwise have been owed by the City Council to the Contractor.

### **33.4 Final Payment Period**

33.4.1 During the final two (2) Payment Periods, in addition to the amounts referred to in clause 33.2.1 the City Council may withhold an amount equivalent to the average per Payment Period of the sum of the Deductions made from the Monthly Unitary Charge in the previous six (6) Payment Periods until

such time as the Contractor shall have provided a report to the City Council in respect of the final two (2) Payment Periods containing the information set out in clause 33.2.1.

33.4.2 On receipt of the reports from the Contractor in respect of the final two (2) Payment Periods the City Council may retain from the amounts withheld pursuant to clause 33.6.1 a sum equivalent to the sum of the Deductions identified in the report and any amounts disputed by the City Council or any other amount agreed by the parties. The City Council shall pay the balance of any monies withheld to the Contractor or if it is agreed or determined the Contractor owes monies to the City Council in excess of those sums withheld, the Contractor shall pay such additional amounts to the City Council, in each case with interest on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the payment was withheld by the City Council pursuant to clause 33.6.1 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 judgement.

### **33.5 Disputed Amounts**

33.5.1 If the City Council disputes the Contractor's entitlement to any part of the amount claimed by the Contractor pursuant to clause 33.2 (*Monthly Monitoring Report and Invoice*) in respect of any Payment Period the provisions of this clause 33.5 (*Disputed Amounts*) shall apply.

33.5.2 The City Council shall notify the Contractor in writing within ten (10) Working Days of receipt by the City Council of the relevant invoice and supporting report of that part of the amount (insofar as at the time of such notice the City Council is reasonably able

to quantify it) which the City Council (acting in good faith) disputes (a "**Disputed Amount**") and submit to the Contractor such supporting evidence as the City Council may have.

33.5.3 The City Council 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.

### **33.6 Response to City Council Notice**

Within five (5) Working Days following receipt by the Contractor of any notice served by the City Council pursuant to clause 33.5.2 (*Disputed Amounts*), the Contractor shall respond by notifying the City Council 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 City Council shall be entitled:

33.6.1 to retain on a permanent basis any amounts withheld pursuant to clause 33.5.3 (*Disputed Amounts*); and

33.6.2 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.

### **33.7 Dispute**

If the Contractor responds (pursuant to clause 33.6 (*Response to City Council Notice*)) that it does not agree with all or any of the statements made in any notice served by the City Council pursuant to clause 33.5.2 (*Disputed Amounts*), the matter or matters in question shall be determined under the Dispute Resolution Procedure.



### **33.8 Determination of Dispute**

If the determination of any dispute conducted pursuant to clause 33.7 (*Dispute*) shows that:

33.8.1 the City Council has withheld any amount which the Contractor was entitled to be paid; or

33.8.2 the Contractor has claimed under clause 33.2 (*Monthly Monitoring Report and Invoice*) any amount which it was not entitled to be paid,

the City Council shall pay (where clause 33.8.1 applies) such amount to the Contractor or the Contractor shall repay (where clause 33.8.2 applies) such amount to the City Council 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 City Council) 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.

### **33.9 Rights of Set Off**

The Contractor shall not be entitled to retain or set off any amount due to the City Council by it, but the City Council may (subject to clause 48.2 (*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, together with (but without double counting) any IWCS payment whether or not such payment has fallen due.

### **33.10 Set Off and Disputed Amounts**

If the payment or deduction of any amount referred to in clause 33.9 (*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.

### **33.11 VAT on Payments**

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

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

33.11.3 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.

33.11.4 The Contractor shall provide the City Council with any information reasonably requested by the City Council in relation to the amount of VAT chargeable in accordance with this Agreement and payable by the City Council to the Contractor.

### **33.12 European Monetary Union**

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

33.12.1.1 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

33.12.1.2 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.

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

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

33.12.2.2 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 City Council 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).

33.12.3 For the purposes of this clause 33.12 (European Monetary Union) "**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.

33.12.4 If, following the implementation of Monetary Union in the United Kingdom, or any part thereof, the City Council 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.

#### **34. INDEXATION**

On each Review Date, the Unitary Charge shall be adjusted for the Contract Year commencing on that Review Date in accordance with paragraph 2.10 of schedule 5 (*Payment Mechanism*).

#### **35. BEST VALUE**

##### **35.1 City Council's Best Value Duty**

35.1.1 The Contractor acknowledges that:

35.1.1.1 the City Council is subject to the Best Value Duty;

35.1.1.2 the provisions of this clause 35 (*Best Value*) are intended to assist the City Council in discharging its Best Value Duty in relation to the Services; and

35.1.1.3 the provisions of this clause 35.1 shall apply in respect of the obligations of the Contractor and the City Council concerning the Best Value Duty and the 1999 Act generally.

35.1.2 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.

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

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

- (a) facilitate any inspection or audit undertaken by any Relevant Authority in connection with the Best Value Duty in respect of the Services, including any inspection undertaken with a view to verifying the City Council's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;
- (b) facilitate the City Council preparing any statement, in response to a City Council's auditor's report;
- (c) assist the City Council in relation to any action taken by the Secretary of State;
- (d) enable the City Council to report on the Best Value Performance Indicators and any National Performance Indicators that apply to the Services and any other data requirements that may be prescribed by any Relevant Authority; and
- (e) comply with all requests by the City Council to procure the attendance of specific officers or employees of the Contractor or any Sub-Contractor or other sub-contractor at any meetings of the City Council at which the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than twelve (12) in any one (1) year).

- 35.1.3.2 co-operating in audits and other Best Value Inspections;
- 35.1.3.3 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:
  - (a) the apparatus and areas connected to the Services;
  - (b) any document or data relating to the Services; and
  - (c) any personnel.

## 35.2 Customer Satisfaction Survey

35.2.1 The Contractor shall, on each Customer Satisfaction Survey Date undertake (or procure the undertaking of) a customer satisfaction survey ("**Customer Satisfaction Survey**") in accordance with this clause 35.2 (*Customer Satisfaction Survey*), the purpose of which shall include:

- 35.2.1.1 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;
- 35.2.1.2 assisting in the preparation of the Contractor's Annual Service Report; and
- 35.2.1.3 monitoring the compliance by the Contractor with the Output Specification.

- 35.2.2 The Customer Satisfaction Survey shall be undertaken by means of distributing to Service Users within ten (10) Working 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 City Council (acting reasonably).
- 35.2.3 The content of the questionnaire or other material to be used for any other survey method referred to in clause 35.2.2 (*Customer Satisfaction Survey*) and the method of undertaking the Customer Satisfaction Survey shall comply with all applicable Legislation and Guidance.
- 35.2.4 The City Council 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.
- 35.2.5 Within three months 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 City Council shall reasonably require and promptly upon a written request from the City Council provide such further details (including copies of all returned questionnaires and/or any other survey material used by the Contractor) as the City Council shall reasonably require.

### 35.3 **Annual Service Report**

- 35.3.1 Without prejudice to any other provision in this Agreement the Contractor shall, no later than the Annual Service Report Date in each year of the Contract Period, at its own cost provide to the City Council a written report ("**Annual Service Report**") in accordance with the requirements of the Output Specification.

- 35.3.2 The Contractor shall upon a written request from the City Council promptly provide such written evidence or other supporting information as the City Council may reasonably require to verify and audit the information and other material contained in the Annual Service Report.
- 35.3.3 If, in the City Council's reasonable opinion, the provision, performance or delivery of the Services (or any part of the Services) may be more effective, efficient and economic having regard to the Annual Service Report and the Best Value Duty, then the City Council may serve a Low Value Change Request or a City Council 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 City Council desires and the provisions of schedule 26 (*Change Protocol*) shall apply.
- 35.3.4 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 a City Council Change Notice (as the case may be) issued pursuant to clause 35.3.3 (*Annual Service Report*) above.

#### **35.4 Performance Standard Benchmarking**

- 35.4.1 Not less than six (6) months before the fifth anniversary of the Initial Services Commencement Date (Refurbishment) and six (6) months before each anniversary thereof during the Contract Period, the City Council shall instigate a Performance Standard Benchmarking Exercise in relation to the Performance Standards at Annex 6 in the Output Specification and thereafter the following provisions of this clause 35.4 (*Performance Standard Benchmarking*) shall apply.



- 35.4.2 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.
- 35.4.3 The Performance Standard Benchmarking Exercise shall be carried out in relation to the City Council's overall housing provision and housing management functions.
- 35.4.4 The Performance Standard Benchmarking Exercise shall be carried out by the City Council at its own cost.
- 35.4.5 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.
- 35.4.6 If in the City Council's reasonable opinion the results of the Performance Standard Benchmarking Exercise disclose that the Performance Standards may be improved having regard to the Best Value Duty, then the City Council may serve a Low Value Change Request or City Council Change Notice (as the case may be) upon the Contractor, stating the nature of the change to the Performance Standards which the City Council desires and the provisions of schedule 26 (*Change Protocol*) shall apply.

## **PART 6 - TERMINATION**

### **36. DIRECT AGREEMENT**

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

## 37. TERMINATION OF THIS AGREEMENT

### 37.1 Voluntary Termination by the City Council

37.1.1 The City Council may terminate this Agreement at any time on or before the Expiry Date by complying with its obligations under clause 37.1.2 and 37.1.3 (*Voluntary Termination by the City Council*).

37.1.2 If the City Council wishes to terminate this Agreement under clause 37.1.1 it must give notice to the Contractor stating:

37.1.2.1 that the City Council is terminating this Agreement under this clause 37.1 (*Voluntary Termination by the City Council*);

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

37.1.2.3 whether the City Council has chosen to exercise its option under clause 37.1.3.

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

37.1.4 This Agreement will terminate on the date specified in the notice referred to in clause 37.1.2 (*Voluntary Termination by the City Council*).

### 37.2 [Not used]

### **37.3 Termination on City Council Default**

37.3.1 If a City Council Default has occurred and the Contractor wishes to terminate the Agreement, the Contractor must serve a termination notice ("**Contractor Termination Notice**") on the City Council within thirty (30) Working Days of becoming aware of the City Council Default.

37.3.2 The Contractor Termination Notice must specify the type of City Council Default which has occurred entitling the Contractor to terminate.

37.3.3 This Agreement will terminate on the day falling thirty (30) Working Days after the date the City Council receives the Contractor Termination Notice, unless the City Council rectifies the City Council Default within twenty (20) Working Days of receipt of the Contractor Termination Notice.

### **37.4 Termination on Contractor Default**

Subject to clause 37.5 (*Rectification of Contractor Default*), the City Council shall be entitled to terminate this Agreement by notice in writing to the Contractor if a Contractor Default has occurred.

### **37.5 Rectification of Contractor Default**

37.5.1 If a Contractor Default has occurred and the City Council wishes to terminate this Agreement, it must serve a Termination Notice on the Contractor.

37.5.2 The Termination Notice must specify:

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

37.5.2.2 that in the case of any Contractor Default falling within paragraph (a), (g), (h), (i) or (n) of the definition of Contractor Default this Agreement will terminate on the day falling forty (40) Working Days after the date the Contractor receives the termination notice, unless:

- (a) in the case of a breach under limb (a) of the definition of Contractor Default, the Contractor puts forward an acceptable rectification programme within twenty (20) Working 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 limb (g), (h), (i) or (n) of the definition of Contractor Default, rectifies the Contractor Default within forty (40) Working Days after the date the Contractor receives the Termination Notice;

37.5.2.3 that in the case of any Contractor Default (not being paragraphs (a), (g), (h), (i) or (n)) this Agreement will terminate on the date falling twenty (20) Working Days after the date the Contractor receives the Termination Notice.

37.5.3 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.

#### 37.5.4 If:

37.5.4.1 in the case of a Contractor within paragraph (a) of the definition of Contractor Default, no acceptable rectification programme has been put forward pursuant to clause 37.5.2.2(a) (*Rectification of Contractor Default*) and the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice; or

37.5.4.2 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 City Council may give notice stating that the Agreement will, subject to the terms of the Direct Agreement, terminate on the date falling forty (40) Working Days after the date of receipt of such notice.

37.5.5 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) Working Days after the date of notification by the City Council to the Contractor of such failure to implement the rectification programme in accordance with such terms.

### 37.6 Termination for Breach of Refinancing Provisions

37.6.1 If the Contractor wilfully breaches clause 81.1 (*Refinancing*) or clause 81.9 (*City Council Right to Request Refinancing*) then the City Council may terminate this Agreement at any time on or before the Expiry Date by complying with its obligations

under clause 37.6.2 (*Termination for Breach of Refinancing Provisions*).

37.6.2 If the City Council decides to terminate the Agreement under clause 37.6.1 (*Termination for Breach of Refinancing Provisions*), it must give notice to the Contractor stating:

37.6.2.1 that the City Council is terminating the Agreement under clause 37.6.1 (*Termination for Breach of Refinancing Provisions*);

37.6.2.2 that the Agreement will terminate on the date falling twenty (20) Working Days after the date of receipt of the notice; and

37.6.2.3 whether the City Council has chosen to exercise its option under clause 37.6.3.

37.6.3 On termination, the City Council shall have the option to require the Contractor to transfer to the City Council its right, title and interest in and to the Assets.

37.6.4 This Agreement shall terminate on the date falling twenty (20) Working Days after the date of receipt of the notice referred to in clause 37.6.2 (*Termination for Breach of Refinancing Provisions*).

### **37.7 Termination for Corrupt Gifts and Fraud**

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

37.7.2

37.7.2.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits

any Prohibited Act, then the City Council shall be entitled to act in accordance with the provisions of this clause 37.7 (*Termination for Corrupt Gifts and Fraud*).

37.7.2.2 Notwithstanding sub-clauses 37.7.2.3 to 37.7.2.6, if a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the City Council 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 City Council may not terminate this Agreement unless, acting reasonably, it considers termination of the Agreement to be in the best interests of the Project.

37.7.2.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the City Council may give notice to the Contractor of termination and this Agreement will terminate, unless within twenty (20) Working 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 and/or the performance of such part of the Services by another person.

37.7.2.4 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor then the City Council may give notice to the Contractor of termination and this Agreement will terminate, unless within twenty (20) Working 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 City Council may not terminate this Agreement unless, acting reasonably, it considers termination of the Agreement to be in the best interests of the Project.

37.7.2.5 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the City Council may give notice to the Contractor of termination and this Agreement will terminate, unless within twenty (20) Working 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.

37.7.2.6 If the Prohibited Act is committed by any other person not specified in clauses 37.7.2.2 to 37.7.2.5, then the City Council may give notice to the Contractor of termination and this Agreement will terminate, unless within twenty (20) Working 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 City Council may not terminate



this Agreement unless, acting reasonably, it considers termination of the Agreement to be in the best interests of the Project.

37.7.2.7 Any notice of termination under this clause 37.7 (*Termination for Corrupt Gifts and Fraud*) shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the City Council 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 City Council's chosen option under clause 49 (*Method of Payment*).

37.7.3 The Contractor undertakes to the City Council 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 an advantage in the conduct of business for the Contractor,

## **38. TERMINATION FOR PERSISTENT BREACH BY THE CONTRACTOR**

### **38.1 Warning Notice**

If a particular breach, other than any breach for which Deductions could have been made or any breach in respect of the New Build Works (save where such breach has a material effect on Tenants,

Leaseholders or adjoining properties), has continued for more than fourteen (14) days or occurred more than three (3) times in any six (6) month period then the City Council may serve a notice on the Contractor:

38.1.1 specifying that the notice is a formal warning notice;

38.1.2 giving reasonable details of the breach; and

38.1.3 stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.

## 38.2 **Final Notice**

If, following service of a warning notice under clause 38.1 (*Warning Notice*) the breach specified has continued beyond thirty (30) days or recurred three (3) or more times within the six (6) month period after the date of service of the warning notice, then the City Council may serve another notice (a "**Final Warning Notice**") on the Contractor:

38.2.1 specifying that it is a Final Warning Notice;

38.2.2 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

38.2.3 stating that if the breach continues for more than thirty (30) days or recurs in two (2) or more months within the six (6) month period after the date of service of the Final Warning Notice, this Agreement may be terminated.

## 38.3 **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.

## **39. TERMINATION ON FORCE MAJEURE**

### **39.1 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 it is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt, the City Council shall not be entitled to terminate this Agreement for Contractor Default if such Contractor Default arises from a Force Majeure Event (but without prejudice to clauses 39.5 (*Failure to Agree*) or 39.7 (*Notice to Continue*)).

### **39.2 Ability to Make Deductions**

Nothing in clause 39.1 (*Relief from Obligations*) shall affect any entitlement to make deductions or any deductions made as a result of schedule 5 (*Payment Mechanism*) in the period during which the Force Majeure Event is subsisting.

### **39.3 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.

### **39.4 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.

### **39.5 Failure to Agree**

If no such terms are agreed on or before the date falling eighty (80) Working 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) Working Days, then, subject to clause 39.6 (*Consequences of Termination*), either party may terminate this Agreement by giving thirty (30) Working Days' written notice to the other party.

### **39.6 Consequences of Termination**

39.6.1 If this Agreement is terminated under clause 39.5 (*Failure to Agree*) or clause 39.7 (*Notice to Continue*) compensation shall be payable by the City Council in accordance with clause 42 (*Compensation on Termination for Force Majeure*).

39.6.2 The City Council may require the Contractor to transfer its title, interest and rights in and to any Assets to the City Council.

### **39.7 Notice to Continue**

If the Contractor gives notice to the City Council under clause 39.5 (*Failure to Agree*) that it wishes to terminate this Agreement, then the City Council has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Working Days after the date of its receipt stating that it requires this Agreement to continue. If the City Council gives the Contractor such notice, then:

39.7.1 the City Council shall pay to the Contractor:

39.7.1.1 the Unitary Charge; and

39.7.1.2 any Contribution payments due from the City Council to the Contractor in accordance with clause 10.3 (*Capital Works Contribution*),

from the day after the date on which this Agreement would have terminated under clause 39.5 (*Failure to Agree*) as if the Works and Services were being fully provided; and

39.7.2 this Agreement will not terminate until expiry of written notice (of at least thirty (30) Working Days) from the City Council to the Contractor that it wishes this Agreement to terminate.

### **39.8 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.

### **39.9 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.

## **40. CONSEQUENCES OF TERMINATION**

### **40.1 Compensation Provisions**

If this Agreement is terminated pursuant to:

- 40.1.1 clause 37.1 (*Voluntary Termination by the City Council*), the provisions of clause 44 (*Compensation on Termination for City Council Default*) shall apply;
- 40.1.2 clause 37.3 (*Termination on City Council Default*), the provisions of clause 44 (*Compensation on Termination for City Council Default*) shall apply;
- 40.1.3 clause 37.4 (*Termination on Contractor Default*), the provisions of clause 43 (*Compensation on Termination for Contractor Default*) shall apply;
- 40.1.4 clause 37.6 (*Termination for Breach of Refinancing Provisions*), the provisions of clause 45 (*Compensation on Corrupt Gifts, Fraud and Refinancing Breaches*) shall apply; or
- 40.1.5 clause 37.7 (*Termination for Corrupt Gifts and Fraud*), the provisions of clause 45 (*Compensation of Corrupt Gifts, Fraud and Refinancing Breaches*);
- 40.1.6 clause 79.3 (*Failure to Issue a Certificate*), the provisions of clause 44 (*Compensation on Termination for City Council Default*) shall apply.

## 40.2 **Termination of Agreement**

Notwithstanding any other provisions of this Agreement, this Agreement shall only terminate in accordance with the express provisions of this Agreement.

## 40.3 **Continuing Obligations**

- 40.3.1 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 82 (*Sole Remedy and Common Law Rights*):

40.3.1.1 termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement prior to termination;

40.3.1.2 termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the City Council under clause 8 (*Nature of Land Interests*), clause 29 (*Transfer of Employees*), clause 30 (*Pensions*), clause 33 (*Payment Provisions*), part 7 (*Compensation on Termination*), clause 55 (*Freedom of Information and Confidentiality*), clause 58 (*Indemnities Guarantees and Contractual Claims*), clause 59 (*Insurance*), clause 60 (*Reinstatement and Change of Requirement after Insured Event*), clause 61 (*Risks that become Uninsurable*), clause 62 (*Dispute Resolution*), clause 64 (*Intellectual Property*), clause 71 (*Notices*), clause 76 (*Contractor's Records*), clause 80 (*Governing Law and Jurisdiction*) and clause 84 (*No Fetter of Statutory Functions*) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequence of such termination.

40.3.2 The clauses of this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## **41. SURVEYS ON TERMINATION AND RETENTION FUND**

### **41.1 Final Survey**

No later than the date eighteen (18) months prior to the Expiry Date, the City Council shall be entitled to carry out or procure the carrying out of a final survey of the Properties to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under clause 23.1 (*Maintenance*).

#### **41.2 Notification**

The City Council shall notify the Contractor in writing a minimum of five (5) Working Days in advance of the date it wishes to commence carrying out of the final survey. The City Council shall consider in good faith any reasonable request by the Contractor for the final survey to be carried out from a different date if such request is made at least two (2) 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.

#### **41.3 Minimisation of Disruption**

When carrying out the final survey, the City Council shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The Contractor shall afford the City Council (free of charge) any reasonable assistance required by the City Council during the carrying out of the final survey. The cost of the final survey shall be borne by the City Council.

#### **41.4 Results of Survey**

If the final survey shows that the Contractor has not complied with or is not complying with its obligations under clause 23.1 (*Maintenance*), the City Council shall:

41.4.1 notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the Properties to the standard they would have been in if the Contractor had



complied or was complying with its obligations under clause 23.1 (*Maintenance*) ("**Required Standard**");

41.4.2 specify a reasonable period within which the Contractor must carry out such work; and

41.4.3 where the non-compliance is material, 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.

#### 41.5 **Retention Fund**

If the Contractor has been notified under clause 41.4.1 (*Results of Survey*) that rectification and/or maintenance work is required, then twelve (12) months prior to the Expiry Date the City Council 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 41.1 (*Final Survey*) from the next following instalment (or if the amount of such instalment is insufficient, the next instalments as necessary) of the Unitary Charge and pay such amount into an interest bearing account ("**Retention Fund Account**") subject to clause 41.7 (*Costs*).

#### 41.6 **Maintenance Work**

The Contractor shall carry out such rectification and/or maintenance work to the City Council'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.

#### 41.7 **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 41.4.1 (*Results of*

*Survey*), the City Council, 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.

#### **41.8 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 41.4.1 (*Results of Survey*), the City Council 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 deductions from the Unitary Charge to pay for such rectification and/or maintenance work or recover such amount from the Contractor as a debt.

#### **41.9 Balance of Fund**

If:

41.9.1 all the rectification and/or maintenance work identified by the City Council or the person the City Council procures to carry out the final survey has been carried out to the Required Standard;

41.9.2 all such rectification and/or maintenance work has been paid for by the Contractor; and

41.9.3 no termination notice given in accordance with this Agreement is outstanding,

on the later of the Expiry Date and the expiry of the period notified pursuant to clause 41.4.1 (*Results of Survey*), then the City Council shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable.

## **PART 7 - COMPENSATION ON TERMINATION**

### **42. COMPENSATION ON TERMINATION FOR FORCE MAJEURE**

#### **42.1 Force Majeure Termination Sum**

On termination of this Agreement under clause 39.3 (*Notification*), the City Council shall pay to the Contractor in accordance with clauses 48 (*Miscellaneous Compensation Provisions*) and 49 (*Method of Payment*) the Force Majeure Termination Sum. Subject to clause 42.2 (*Adjustment of Compensation Amount*), the Force Majeure Termination Sum shall be an amount equal to the aggregate of:

42.1.1 the Base Senior Debt Termination Amount;

42.1.2 the Junior Debt, less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements;

42.1.3 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 42.1.2 above); and

42.1.4 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.

#### **42.2 Adjustment of Compensation Amount**

42.2.1 If the aggregate of the amounts referred to in clauses 42.1.1, 42.1.2 and 42.1.3 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 42.1.4 provided always that:

42.2.1.1 the amount referred to in clause 42.1.4 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the City Council that the amount will not be paid in payment (in whole or in part) of any Distribution; and

42.2.1.2 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.

42.2.2 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 11.4.4(a) 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 City Council 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 not be less than the Revised Senior Debt Termination Amount.

42.2.3 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under clause 11.4.4(b) 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 City Council 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 42 (*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 not be less than the Revised Senior Debt Termination Amount.

#### **42.3 Amounts less than Zero**

If the amounts referred to in clauses 42.1.2 (*Force Majeure Termination Sum*) and/or 42.1.3 (*Force Majeure Termination Sum*) are less than zero then, for the purposes of the calculation in clause 42.1 (*Force Majeure Termination Sum*), they shall be deemed to be zero.

#### **42.4 Payment**

The Force Majeure Termination Sum payable pursuant to this clause 42 (*Compensation on Termination for Force Majeure*) shall be determined and paid in accordance with clauses 48 (*Miscellaneous Compensation Provisions*) and 49 (*Method of Payment*).

#### **42.5 Transfer of Assets**

On termination, the City Council shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Assets to the City Council or as directed by the City Council .

## 43. COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT

### 43.1 Retendering Election

43.1.1 Subject to clause 43.1.2 (*Retendering Election*), on termination of this Agreement under clause 37.4 (*Termination on Contractor Default*) subject to clauses 43.1.2 and 43.1.3 (*Retendering Election*), the City Council shall be entitled to:

43.1.1.1 retender the provision of the Project in accordance with clause 43.2 (*Retendering Procedure*); or

43.1.1.2 require an expert determination in accordance with clause 43.3 (*No Retendering Procedure*).

43.1.2 The City Council shall be entitled to retender the provision of the Project in accordance with clause 43.2 (*Retendering Procedure*) if the City Council notifies the Contractor on or before the date falling twenty (20) Working Days after the Termination Date and there is a Liquid Market and either:

43.1.2.1 the Senior Funders have not exercised their rights to step in under clause 5 of the Direct Agreement; or

43.1.2.2 the Contractor or the Senior Funders 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 City Council shall not be entitled to re-tender the provision of the Services and clause 43.3 shall apply.

43.1.3 The City Council shall not be entitled to elect to retender the provision of the Services in accordance with clause 43.2 (*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 Funders have demonstrated to the City Council 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:

43.1.3.1 the expiry of any Moratorium Period; and

43.1.3.2 three (3) months from the date of the application to the Secretary of State accompanied by all required information necessary to obtain such consent.

## **43.2 Retendering Procedure**

If the City Council elects to retender the provision of the Project under clause 43.1 (*Retendering Election*), then the following provisions shall apply:

43.2.1 The objective of the retendering procedure shall be to establish and pay to the Contractor the Highest Compliant Tender Price, as a result of the Tender Process.

43.2.2 The City Council shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable.

43.2.3 The City Council 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.

- 43.2.4 The Contractor authorises the release of any information by the City Council under the Tender Process which would otherwise be prevented under clause 55 (*Information and Confidentiality*) that is reasonably required as part of the Tender Process.
- 43.2.5 The Contractor may, at its own cost, appoint a person ("**Tender Process Monitor**") to monitor the Tender Process for the purpose of monitoring and reporting to the Contractor and the Senior Funders on the City Council's compliance with the Tender Process and making representations to the City Council. The Tender Process Monitor will not disclose any confidential information to the Contractor or any other person (and shall provide an undertaking to the City Council to such effect as a condition of its appointment) but shall be entitled to advise the Contractor as to whether it considers that the City Council has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price.
- 43.2.6 The Tender Process Monitor shall enter into a confidentiality agreement with the City Council in a form acceptable to the City Council 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 City Council 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 City Council 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.



43.2.7 For all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the City Council shall pay to the Contractor:

43.2.7.1 the Post Termination Service Amount for that month, on or before the date falling ten (10) Working Days after the end of that month; and

43.2.7.2 the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling twenty (20) Working Days after the Compensation Date.

43.2.8 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.

43.2.9 The City Council 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.

43.2.10 As soon as practicable after tenders have been received, the City Council shall (acting reasonably) determine the Compliant Tenders and shall notify the Contractor of the Adjusted Highest Compliant Tender Price.

43.2.11 If the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure the City Council shall be entitled to enter into a New Contract. The City Council shall pay to the Contractor the

Adjusted Highest Compliant Tender Price on or before the date falling twenty (20) Working Days after it has been determined in accordance with the Dispute Resolution Procedure and the City Council 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 43.2.12 until the date specified in this clauses 43.2.11. 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 City Council 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 43.2.12 (*Retendering Procedure*) below, with the disputed amount being dealt with in accordance with this clause 43.2.11 (*Retendering Procedure*),

43.2.12 Subject to clauses 43.2.11 (*Retendering Procedure*) and 43.2.15 (*Retendering Procedure*), the City Council shall pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Working Days after the date of the New Contract.

43.2.13 The discharge by the City Council of its payment obligation in clauses 43.2.11 (*Retendering Procedure*) and/or 43.2.12 (*Retendering Procedure*) shall be in full and final settlement of all the Contractor's claims and rights against the City Council 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 City Council which arose prior to the Termination Date that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.

43.2.14 Subject to clauses 43.2.15 (*Retendering Procedure*) and 43.2.18 (*Retendering Procedure*), if the City Council has not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Contractor on or before the date falling two (2) years after the Termination Date then the following provisions of this clause 43.2.14 shall not apply to that termination and the provisions of clause 43.3 (*No Retendering Procedure*) shall apply instead.

43.2.15 If the Adjusted Highest Compliant Tender Price is zero or a negative number then the City Council shall have no obligation to make any payment to the Contractor and with effect from the time that the City Council gives notice of that event to the Contractor, the City Council 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 City Council 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.

43.2.16 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 City Council on the date of the New Contract.

43.2.17 The City Council may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under clause 43.3 (*No Retendering Procedure*) by notifying the Contractor that this election has been made.

43.2.18 If the City Council 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 twenty (20) Working Days of such notification.

### **43.3 No Retendering Procedure**

If the City Council is not entitled to retender the provision of the Project under clause 43.1.2 or 43.1.3 (*Retendering Election*), or the City Council elects to require an expert determination in accordance with this clause 43.3 (*No Retendering Procedure*), then the following procedure shall apply:

43.3.1 Subject to clause 43.3.2 (*No Retendering Procedure*), the Contractor shall not be entitled to receive any Post Termination Service Amount.

43.3.2 If the City Council elects to require an expert determination in accordance with this clause 43.3 (*No Retendering Procedure*) after it has elected to follow the procedure under clause 43.2 (*Retendering Procedure*), then the City Council shall continue to pay to the Contractor each Post Termination Service Amount until the Compensation Date, in accordance with clause 43.2 (*Retendering Procedure*).

43.3.3 In agreeing or determining the Estimated Fair Value of the Contract, the parties shall be obliged to follow the principles set out below:

43.3.3.1 all forecast amounts should be calculated in nominal terms at current prices, using the indexation formula in paragraph 2.10 of schedule 5 (*Payment Mechanism*) 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 (as set out in the Base Case) in applying the formula;

43.3.3.2 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;

43.3.3.3 the total of all costs forecast to be incurred by the City Council 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 43.3.3.2, 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 City Council 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 City Council 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 43.3.3.2; and

43.3.3.4 the total of all future payments of elements of the Contribution forecast to be made shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate.

43.3.4 If the parties cannot agree on the Adjusted Estimated Fair Value of the Contract on or before the date falling twenty (20) Working Days after the date on which the City Council elected to require an expert determination in accordance with this clause 43.3 (*No Retendering Procedure*), then the Estimated Fair Value of the Contract shall be determined in accordance with the Dispute Resolution Procedure.

43.3.5 Subject to clause 49.2 (*Instalments*), the City Council shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of the Contract on the date falling forty (40) Working Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this clause 43.3 (*No Retendering Procedure*).

43.3.6 The discharge by the City Council of its obligation in clause 43.3.5 (*No Retendering Procedure*) is in full and final settlement of all the Contractor's claims and rights against the City Council 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.

43.3.7 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 City Council on the Compensation Date.

#### **43.4 Transfer of Assets on Contractor Default**

On termination of this Agreement under clause 37.4 (*Termination on Contractor Default*), the City Council shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Assets to the City Council or as directed by the City Council.

### **44. COMPENSATION ON TERMINATION FOR CITY COUNCIL DEFAULT**

#### **44.1 City Council Default Termination Sum**

On termination of this Agreement pursuant to clauses 37.1 (*Voluntary Termination by the City Council*) or clause 37.3 (*Termination on City Council Default*) the City Council shall pay the Contractor the City Council Default Termination Sum in accordance with clauses 48 (*Miscellaneous Compensation Provisions*) and 49 (*Method of Payment*) on the Termination Date. Subject to clause 44.4 (*Adjustment of Compensation Amount*), the City Council Default Termination Sum shall be an amount equal to the aggregate of:

44.1.1 the Base Senior Debt Termination Amount;

44.1.2 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

44.1.3 [not used]

44.1.4 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.

44.1.5 [not used]

44.2 **[Not used]**

44.3 **Option to Transfer Assets**

On payment of the amount referred to in clause 44.1 (*City Council Default Termination Sum*) the City Council shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets to the City Council or as directed by the City Council.

44.4 **Adjustment of Compensation Amount**

44.4.1 If the aggregate of the amounts referred to in clause 44.1.1 and 44.1.4 is less than the Revised Senior Debt Termination Amount, then the City Council 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 44.1.2 provided always that:

44.4.1.1 the amount referred to in clause 44.1.2 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the City Council that the amount will not be paid in payment (in whole or in part) of any Distribution; and

44.4.1.2 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.

44.4.2 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 11.4.4.(a) 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 City Council shall be entitled to set off the value of that Distribution a second time against the City Council Default Termination Sum, provided that the amount of the City Council Default Termination Sum shall not be less than the Revised Senior Debt Termination Amount.

44.4.3 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under clause 11.4.4(b) 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 City Council 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 44 (*Compensation for Termination on City Council Default*), then the City Council 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 City Council Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

#### **45. COMPENSATION ON CORRUPT GIFTS, FRAUD AND REFINANCING BREACHES**

On termination of this Agreement in accordance with clauses 37.6 (*Termination for Breach of Refinancing Provisions*) or 37.7 (*Termination for Corrupt Gifts and Fraud*) the City Council 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 48 (*Miscellaneous Compensation Provisions*) and 49 (*Method of Payment*).

#### **46. ASSETS AND TRANSITION TO ANOTHER CONTRACTOR**

##### **46.1 Treatment of Assets at Expiry Date**

46.1.1 On or before a date falling no later than twelve (12) months prior to the expiry Date, the City Council shall notify the Contractor in writing whether it wishes to retender the provision of the Services.

46.1.2 If the City Council wishes to retender the provision of the Services then:

46.1.2.1 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

46.1.2.2 the City Council will bear all costs of any retendering of the Agreement on expiry.

46.1.3 If the City Council does not wish to retender the Services then the Assets shall transfer to the City Council on the Expiry Date and the Contractor shall do any necessary acts (including entering into any contracts) to ensure that the City Council

obtains all of its rights, title and interest in the Assets with effect on and from the Expiry Date.

## 46.2 **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 Services) to any New Contractor of such services the same or similar to the Services, and for the purposes of this clause 46.2 (*Duty to Co-operate*) the meaning of the term "co-operate" shall include:

- 46.2.1 liaising with the City Council and/or any New Contractor, and providing reasonable assistance and advice concerning the Services and their transfer to the City Council or to such New Contractor;
- 46.2.2 allowing any such New Contractor access (at reasonable times and on reasonable notice) to the Assets but not so as to interfere with or impede the provision of the Works and/or Services;
- 46.2.3 (without prejudice to the obligations of the Contractor pursuant to clause 31.10 (*Operating Manual*)) providing to the City Council and/or to any New Contractor all and any information concerning the Dwellings, Project Sites Works and/or the Services which is reasonably required for the efficient transfer of responsibility for their performance; and
- 46.2.4 doing all necessary acts (including entering into any contracts) to ensure that the New Contractor obtains all of its rights, title and interest in and to the Assets with effect on and from the Expiry Date.

### **46.3 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 City Council, 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.

## **47. CONTRACTOR'S ACCOUNTS AND FINANCING AGREEMENTS**

### **47.1 Delivery of Initial and Change Project Documents and Financing Agreements**

47.1.1 The Contractor has provided to the City Council copies of the Project Documents and of the Initial Financing Agreements;

47.1.2 Without prejudice to the provisions of clauses 47.2 (*Changes to Project Documents*) or 47.3 (*Changes to Financing Agreements*) or to the definition of Senior Financing Agreements in schedule 1, 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 City Council a conformed copy of each such amendment or agreement within ten (10) Working 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.

### **47.2 Changes to Project Documents**

The Contractor shall perform its obligations under, and observe all of the provisions of, the Project Documents and shall not:

47.2.1 terminate or agree to the termination of all or part of any Project Document;

47.2.2 make or agree to any material variation to any Project Document;

47.2.3 in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that any counterparty to a Project Document in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Project Document; or

47.2.4 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 City Council for review pursuant to the Review Procedure and there has been no objection made by the City Council in accordance with paragraph 3 of the Review Procedure within twenty (20) Working Days (or such shorter period as may be agreed by the parties) of receipt by the City Council's Representative of the submission of the proposed course of action (and any relevant documentation), and, in the circumstances specified in clause 47.2.1, the Contractor has complied with clauses 65 (*Assignment and Sub-Contracting*).

### 47.3 **Changes to the Financing Agreements**

47.3.1 Without prejudice to the terms of clause 7 (*Documents and Co-operation*) and clause 81 (*Refinancing*), the Contractor shall not, without the prior written consent of the City Council, 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;

47.3.2 No amendment, waiver or exercise of a right under any Financing Agreement or Project Document shall have the effect of increasing the City Council's liabilities on early termination of this Agreement unless:

47.3.2.1 the Contractor has obtained the prior written consent of the City Council to such increased liability for the purposes of this clause 47.3 (*Changes to the Financing Agreements*); or

47.3.2.2 it is a Permitted Borrowing,

in the event of any conflict between the provisions of this clause 47.3.2 and any other provision of this Agreement, the provisions of this clause 47.3.2 shall prevail.

#### **47.4 Accounts**

The accounts of the Contractor shall be maintained as foreseen in the Base Case.

### **48. MISCELLANEOUS COMPENSATION PROVISIONS**

#### **48.1 Gross Up of Termination Payments**

If any amount of compensation payable by the City Council under clauses 42 (*Compensation on Termination for Force Majeure*), 44 (*Compensation on Termination for City Council Default*) and 45 (*Compensation on Corrupt Gifts, Fraud and Refinancing Breaches*) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the City Council 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.

#### **48.2 Set Off on Termination**

Except where expressly stated otherwise, the City Council 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 42 (*Compensation on Termination for Force Majeure*), 45 (*Compensation on Corrupt Gifts, Fraud and Refinancing Breaches*) and 44 (*Compensation on Termination for City Council 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.

#### **48.3 Exclusivity of Remedy**

Any payment of compensation shall be in full satisfaction of any claim which can be made against the City Council by the Contractor in relation to termination of this Agreement or any Project Document. The compensation payable under clauses 42 (*Compensation on Termination for Force Majeure*), 44 (*Compensation on Termination for City Council Default*) and 45 (*Compensation on Corrupt Gifts, Fraud and Refinancing Breaches*) shall be the sole remedy of the Contractor against the City Council in respect of termination of this Agreement.

#### **48.4 Certificate of Senior Funders**

The City Council shall be entitled to rely on the certificate of the Majority Creditor(s) 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 Majority Creditor(s) (or payment to an account specified by the Majority Creditor(s)) of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or elements thereof as relevant shall discharge the City Council's obligation to pay such sums to the Contractor.

## **49. METHOD OF PAYMENT**

### **49.1 Termination Sum**

The City Council shall pay to the Contractor the Termination Sum, together with interest on any Base 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 sixty (60) 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 49.2 (*Instalments*) below.

### **49.2 Instalments**

The City Council may, other than on a City Council 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:

49.2.1 other than the Adjusted Estimated Fair Value of the Contract, as follows (in substitution for the payment of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum):

49.2.1.1 by payment of:



(a) any interest, principal or other amount which has become due and payable under the Senior Financing Agreements prior to the date falling 40 Business Days after the Notice Date (the "Election Date") and which has not been paid prior to the Election Date, on or before the Election Date; and

(b) any interest and principal due under the Senior Financing Agreements (prior to any acceleration) and any amounts due under the Financial Guarantee Fee Letters on the Instalment Dates; and

49.2.1.2 there shall be deducted from the sums payable under clause 49.2.1.1:

(a) all credit balances on any bank accounts (but excluding the Joint Insurance Account and the Distributions Accounts) held by or on behalf of the Contractor, HoldCo or the Issuer on the Termination Date;

(b) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;

(c) all other amounts (except insurance proceeds in respect of third party liabilities and other insurance proceeds to which the Contractor is not beneficially entitled) received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the City Council to the Contractor as a result of enforcing any other rights the Contractor may have; and

- (d) all APB Distributions; and
- (e) any Default Interest payable on Additional Permitted Borrowing,

such deductions to be made on a pound for pound basis against the first payment of principal and interest due under clause 49.2.1.1 and against each subsequent such payment until all such sums have been deducted; and

49.2.2 in the case of the Adjusted Estimated Fair Value of the Contract, in instalments as follows:

49.2.2.1 where the Adjusted Estimated Fair Value of the Contract is greater than or equal to the Outstanding Principal:

- (a) in respect of that element of the Adjusted Estimated Fair Value of the Contract less than or equal to the Outstanding Principal, on the Instalment Dates and in the amounts that the Contractor would have been required to repay principal to the Senior Funders under the terms of the Senior Financing Agreements (disregarding any changes to such amounts or dates that have not been approved by the City Council other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; and
- (b) in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Adjusted Estimated Fair Value of the Contract

in equal instalments on the Instalment Dates;  
and

49.2.2.2 where the Adjusted Estimated Fair Value of the Contract 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 Funders on each Instalment Date under the terms of the Senior Financing Agreements (disregarding any changes to such amounts or dates that have not been approved by the City Council other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; or

49.2.3 as the parties may otherwise agree.

### 49.3 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.

### 49.4 Payment of Outstanding Element

If the City Council has elected to pay in accordance with:

49.4.1 clause 49.2.1 and/or clause 49.2.3 (as applicable) (*Instalments*), it may (on twenty (20) Business Days' prior written notice to the Contractor) pay to the Contractor (in accordance with clause 49.1 (*Termination Sum*)) an amount equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as the case may be) calculated on the basis that the date that the City Council serves written notice on the Contractor pursuant to this

clause 49.4.1 shall be deemed to be the "Termination Date" together with the Make-Whole Payment; or

49.4.2 clause 49.2.2 and/or clause 49.2.3 (as applicable) (*Instalments*), it may (on twenty (20) Business Days' prior written notice to the Contractor) elect to pay the outstanding part of the Adjusted Estimated Fair Value of the Contract element of the Termination Sum in full on any Instalment Date, together with the Make-Whole Payment.

#### **49.5 City Council Default in Payment**

If the City Council:

49.5.1 fails to make a payment to the Contractor in accordance with clauses 49.1 (*Termination Sum*) and/or 49.2 (*Instalments*) and/or 49.3 (*Interest*); or

49.5.2 breaches clause 65.1 (*Restrictions on Transfer of the Agreement by the City Council*),

the Contractor may issue a notice to the City Council declaring:

- (a) in circumstances where the City Council has failed to make a payment to the Contractor in accordance with clause 49.2.2 and/or clause 49.2.3 (as applicable) (*Instalments*), any unpaid and outstanding element of the Adjusted Estimated Fair Value of the Contract element of the Termination Sum; and
- (b) in circumstances where the City Council has failed to make a payment to the Contractor in accordance with clause 49.2.1 and/or clause 49.2.3 (as applicable) (*Instalments*), an amount equal to the Base Senior Debt Termination

Amount or the Revised Senior Debt Termination Amount (as the case may be) calculated on the basis that the date that the Contractor issues a notice to the City Council pursuant to this clause 49.5 shall be deemed to be the "Termination Date",

together, in each case, with the Make-Whole Payment and any accrued but unpaid interest to be immediately due and payable.

#### **49.6 Ongoing Payments**

If the City Council has elected to make payments in accordance with clause 49.2 (*Instalments*) from the Termination Date until the earlier of:

49.6.1 the date of payment by the City Council of any sum due pursuant to clause 49 as a lump sum (including, without limitation, pursuant to clause 49.5); and

49.6.2 the final date of the Instalment Period,

the City Council shall reimburse HoldCo and the Issuer within ten (10) Business Days of written demand (such demand to be accompanied by reasonable supporting evidence) against any reasonable costs and expenses that have been properly incurred by HoldCo or the Issuer in the period after the Termination Date:

- (a) for the preparation, audit (if required) and filing of all tax and information returns that are required by law to be filed by it in any relevant jurisdiction;
- (b) in order to maintain the listing for the Bonds on the Official List maintained by the UK Listing

Authority and the admission to trading of the Bonds by London Stock Exchange plc;

- (c) for furnishing to the UK Listing Authority and/or London Stock Exchange plc such information as the UK Listing Authority and/or London Stock Exchange plc may require to be furnished to it;
- (d) in respect of the recurring fees payable under the Senior Financing Agreements to Assured Guaranty, the Bond Trustee, any Paying Agent, the Security Trustee, any receiver acting as trustee or receiver under the Senior Financing Agreements, the Account Bank and/or any rating agencies, together with any additional fee payable under the Senior Financing Agreements to such parties where the amount of such fee has been approved by the City Council in writing (such approval not to be unreasonably withheld or delayed), in each case without double-counting any amount payable under Clause 49.2 (Instalments);
- (e) in respect of any costs and expenses payable under the Senior Financing Agreements to Assured Guaranty, the Bond Trustee, any Paying Agent, the Security Trustee, any receiver acting as trustee or receiver under the Senior Financing Agreements, the Account Bank and/or any rating agencies provided that, where such payment obligation has been incurred as a result of any action or inaction by HoldCo or the Issuer, the City Council shall

only be required to reimburse such payment where such action or inaction has been approved by the City Council in writing (such approval not to be unreasonably withheld or delayed);

(f) in connection with the corporate management, operation and administration of HoldCo or the Issuer; and

(g) in respect of any legal fees incurred in connection with any of the above,

in each case provided that, where applicable, any services provided to HoldCo or the Issuer have been procured in a cost effective manner.

## **PART 8 - GENERAL**

### **50. LIAISON**

The parties shall give effect to the procedure set out in schedule 9 (*Liaison Procedure*).

### **51. RELIEF EVENTS**

#### **51.1 Occurrence**

If and to the extent that a Relief Event:

51.1.1 is the direct cause of a delay to a Planned Services Commencement Date or failure to achieve a Milestone; and/or

51.1.2 adversely affects the ability of the Contractor to perform any of its obligations under this Agreement,

then the Contractor is entitled to apply for relief from any rights of the City Council arising under clause 37.4 (*Termination on Contractor*

*Default*) and from the obligation to pay liquidated damages pursuant to clause 21.1.3.

## 51.2 Relief

To obtain relief, the Contractor must:

51.2.1 as soon as practicable, and in any event within ten (10) Working Days after it became 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 City Council 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;

51.2.2 within five (5) Working Days of receipt by the City Council of the notice referred to in clause 51.2.1 (*Relief*), give full details of the relief claimed; and

51.2.3 demonstrate to the reasonable satisfaction of the City Council that:

51.2.3.1 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;

51.2.3.2 the Relief Event directly caused the delay to the relevant Planned Services Commencement Date or Milestone;

51.2.3.3 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

51.2.3.4 the Contractor is using reasonable endeavours to perform its obligations under this Agreement.

### 51.3 Consequences

In the event that the Contractor has complied with its obligations under clause 51.2 (*Relief*), then:

51.3.1 the Planned Services Commencement Date shall be postponed by such time, or any relevant Milestone(s) shall be amended in such manner as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

51.3.2 the City Council shall not be entitled to exercise its right to terminate the Agreement under clause 37.4 (*Termination on Contractor Default*).

### 51.4 Deductions

Nothing in clause 51.3 (*Consequences*) shall affect any entitlement to make deductions or deductions made under clause 33 (*Payment Provisions*) and schedule 5 (*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 City Council's right to terminate this Agreement for a Contractor Default.

### 51.5 Information

In the event that information required by clause 51.2 (*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.

### 51.6 Notice

The Contractor shall notify the City Council 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.

#### **51.7 Disputes**

If the parties cannot agree the extent of the relief required, or the City Council disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to a Planned Services Commencement Date amendment to any relevant Milestone and/or relief from other obligations under this Agreement, the parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

### **52. CHANGE IN LAW**

#### **52.1 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.

#### **52.2 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:

52.2.1 any necessary change in the Works and/or the Services;

52.2.2 whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law;

52.2.3 whether relief from compliance with obligations is required, including the obligation of the Contractor to achieve a Planned

Services Commencement Date in relation to a Dwelling and/or meet the Output Specification and/or the Contractor's Proposals during the implementation of any relevant Qualifying Change in Law;

52.2.4 any loss of revenue that will result from the relevant Qualifying Change in Law;

52.2.5 any Estimated Change in Project Costs that directly result from the Qualifying Change in Law; and

52.2.6 any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Services Period,

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 52.3 (*Parties to Discuss*) to 52.7 (*Adjustment to Unitary Charge*).

### **52.3 Parties to Discuss**

As soon as practicable after receipt of any notice from either party under clause 52.2 (*Qualifying Change in Law*), the parties shall discuss and agree the issues referred to in clause 52.2 (*Qualifying Change in Law*) and any ways in which the Contractor can mitigate the effect of the Qualifying Change in Law, including:

52.3.1 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;

52.3.2 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;

52.3.3 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

52.3.4 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 52.2.5 (*Qualifying Change in Law*) and/or 52.2.6 (*Qualifying Change in Law*).

#### **52.4 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, then the Contractor shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and the Senior Funders.

#### **52.5 Contractor's Share**

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 nil.

#### **52.6 Failure to Obtain Funding for Capital Expenditure**

If the Contractor has used reasonable endeavours to obtain funding for the Capital Expenditure referred to in clause 52.4 (*Funding for Capital*

*Expenditure*), but has been unable to do so within forty (40) Working Days of the date that the agreement or determination referred to in clause 52.4 (*Funding for Capital Expenditure*) occurred, then the City Council shall pay to the Contractor an amount equal to that Capital Expenditure on or before the date falling twenty (20) Working Days after the Capital Expenditure has been incurred.

#### **52.7 Adjustment to Unitary Charge**

Any compensation payable under this clause 52 (*Change in Law*) including any Capital Expenditure procured by the Contractor in accordance with clause 52.4 (*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 67 (*Financial Adjustments*).

#### **52.8 Postponement of Relevant Dates**

Any relevant date (as the case may be) shall be postponed by such period as is agreed in accordance with clause 52.3 (*Parties to Discuss*) or determined under the Disputes Resolution Procedure.

#### **52.9 Payment of Irrecoverable VAT**

The City Council 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) Working Days of the delivery by the Contractor to the City Council 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 52.9 (*Payment of Irrecoverable VAT*) "**Irrecoverable VAT**" means input VAT incurred by the Contractor on any supply which is made to it which is used or to be used exclusively in performing the Works or the Services or any of the obligations or provisions under this

Agreement (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.

### **53. CITY COUNCIL AND CONTRACTOR CHANGES**

53.1 The City Council may propose a City Council 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.

#### **53.2 Tenant Consultation**

The City Council shall undertake any consultation required under Section 105 of the 1985 Act as a consequence of a change to the Works and/or Services under the Change Protocol.

### **54. CITY COUNCIL STEP-IN**

#### **54.1 Right to Step-In**

If the City Council reasonably believes that it needs to take action in connection with the Services:

54.1.1 or the Works (in respect of Refurbishment Properties) because a serious risk exists to the health or safety of persons or property or to the environment;

54.1.2 or the Works (in respect of Refurbishment Properties) to discharge a statutory duty; and/or

54.1.3 where a Dwelling has not been made Available for a period of five (5) months save where the Contractor has commenced Works or other actions sufficient to restore Availability unless, having commenced such Works or other actions, the City Council reasonably believes that the Contractor is likely to

complete (or to have completed) them within the period of one (1) month,

then the City Council shall be entitled to take action in accordance with clauses 54.2 (*Notice to the Contractor*) to 54.5 (*Step-In on Contractor Breach*).

#### **54.2 Notice to the Contractor**

If clause 54.1 (*Right to Step-In*) applies and the City Council wishes to take action, the City Council shall notify the Contractor in writing of the following:

54.2.1 the action it wishes to take;

54.2.2 the reason for such action;

54.2.3 the date it wishes to commence such action;

54.2.4 the time period which it believes will be necessary for such action; and

54.2.5 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.

#### **54.3 Action by City Council**

54.3.1 Following service of such notice, the City Council shall take such action as notified under clause 54.2 (*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 City Council while it is taking the Required Action. The City Council shall provide the Contractor with notice of completion of the Required Action and shall use

reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

54.3.2 Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the City Council shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify the Contractor against all Direct Losses where, having taken the Required Action, the City Council fails to do so in accordance with Good Industry Practice, subject to the Contractor at all times taking all reasonable steps to mitigate such Direct Losses.

#### **54.4 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 Works and/or providing any part of the Services:

54.4.1 the Contractor shall be relieved from its obligations to carry out the Works and/or provide such part of the Services; and

54.4.2 in respect of the period in which the City Council is taking the Required Action and provided that the Contractor provides the City Council with reasonable assistance (such assistance to be at the expense of the City Council to the extent that incremental costs are incurred):

54.4.2.1 the Unitary Charge due from the City Council to the Contractor; and

54.4.2.2 any Contribution payments due from the City Council to the Contractor in accordance with clause 10.3 (*Capital Works Contribution*),



shall equal the amount the Contractor would receive if it were satisfying all its obligations and carrying out the Works and/or providing the Services affected by the Required Action in full over that period.

#### **54.5 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 Works and/or providing any part of the Services:

54.5.1 the Contractor shall be relieved of its obligations to carry out such part of the Works and/or provide such part of the Services; and

54.5.2 in respect of the period in which the City Council is taking the Required Action:

54.5.2.1 the Unitary Charge due from the City Council to the Contractor; and

54.5.2.2 any Contribution payments due from the City Council to the Contractor in accordance with clause 10.3 (*Capital Works Contribution*),

shall equal the amount the Contractor would receive if it were satisfying all its obligations and carrying out the Works and/or providing the Services affected by the Required Action in full over that period, less an amount equal to all the City Council's costs of operation in taking the Required Action.

#### **54.6 Rights of access**

- 54.6.1 The City Council or a representative of the City Council 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.
- 54.6.2 The City Council and a representative of the City Council 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.
- 54.6.3 The Contractor shall procure that satisfactory facilities are made available to the City Council and any representative of the City Council and that reasonable assistance is given for the purposes of clauses 54.6.1 and 54.6.2, subject to the Contractors and Sub-contractors construction or operational requirements not being adversely affected and to reimbursement of any reasonable costs or expenses of the Contractor.
- 54.6.4 If the City Council is or becomes aware of a breach by the Contractor of its obligations under clause 23.1 (*Maintenance*) then the City Council 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.
- 54.6.5 The City Council and its representative shall at all times comply with any health and safety requirements when exercising its rights under this clause.
- 54.6.6 If the City Council or its representative causes material damage to any Asset in exercising any right under this clause, then the City Council shall be liable to the Contractor for the reasonable costs directly caused by such damage.

## 55. FREEDOM OF INFORMATION AND CONFIDENTIALITY

### 55.1 Duty of Confidentiality

55.1.1 The parties agree that provisions of this Agreement and each Project Document shall, subject to clauses 55.1.2 (*Duty of Confidentiality*) below, not be treated as Confidential Information and may be disclosed without restriction and the Contractor acknowledges that the City Council intends to publish, subject to sub-clause 55.1.2 below, this Agreement and some of the Project Documents on a website.

55.1.2 Clause 55.1.1 (*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 23 (*Commercially Sensitive Information*) to this Agreement which shall, subject to clause 55.2 (*Permitted Disclosure*) below, be kept confidential for the periods specified in that part.

55.1.3 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.

55.1.4 The parties agree that the internal rate of return information provided pursuant to clause 76.7.6 shall not be treated as Confidential Information and the Contractor acknowledges that the government intends to publish such information on a website.

55.1.5 The parties agree that information provided pursuant to clause 66.2 (*Notification*) in respect of any Change in Ownership

which has actually taken place shall not be treated as Confidential Information.

## 55.2 Permitted Disclosure

Clauses 55.1.2 and 55.1.3 (*Duty of Confidentiality*) shall not apply to:

- 55.2.1 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;
- 55.2.2 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 55 (*Information and Confidentiality*);
- 55.2.3 any disclosure to enable a determination to be made under clause 62 (*Dispute Resolution*) or in connection with a dispute between the Contractor and any of its sub-contractors;
- 55.2.4 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;
- 55.2.5 any disclosure which is required to maintain either:
  - (a) a rating assigned to the Bonds by the rating agencies, by reference to the Project on a stand-alone basis, excluding any effect on such rating of any of the Financial Guarantees; or

(b) a rating assigned to the Bonds by the rating agencies by reference to the Project and the effect on such rating of the Financial Guarantees, in accordance with general practice;

55.2.6 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

55.2.7 any provision of information to the parties' own professional advisers or insurance advisers or to the Senior Funders or the Senior Funders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under this Agreement, or may wish to acquire shares in the Contractor and/or Holdco and/or the Issuer 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;

55.2.8 any disclosure by the City Council 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:

55.2.8.1 any proposed new contractor, its advisers and lenders, should the City Council decide to retender this Agreement; or

55.2.8.2 any person in connection with a Market Testing;

55.2.9 any registration or recording of the Consents and property registration required;

55.2.10 any disclosure of information by the City Council to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the City Council for any purpose related to or ancillary to this Agreement; or

55.2.11 any disclosure for the purpose of:

55.2.11.1 the examination and certification of the City Council's or the Contractor's accounts;

55.2.11.2 any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the City Council has used its resources;

55.2.11.3 complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or

55.2.11.4 (without prejudice to the generality of clause 55.2.4 (*Permitted Disclosure*) above) compliance with the FOIA and/or the Environmental Information Regulations,

provided that, for the avoidance of doubt, neither clauses 55.2.10.4 (*Permitted Disclosure*) nor clause 55.2.4 (*Permitted Disclosure*) above shall permit disclosure of Confidential Information otherwise prohibited by clause 55.2.3 (*Duty of Confidentiality*) above where that information is exempt from disclosure under section 41 of the FOIA;

55.2.12 information required by any Judicial Proceedings

55.2.13 information for responding to any Town and Village Green Application, or information required by any or Stopping Up Judicial Proceedings.

### **55.3 Obligations Preserved**

Where disclosure is permitted under clause 55.2 (*Permitted Disclosure*), other than clauses 55.2.2, 55.2.4, 55.2.5, 55.2.8 and 55.2.10, 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.

### **55.4 Audit**

For the purposes of the Audit Commission Act 1998 (and any other Legislation relating to the inspection, examination and auditing of the City Council's accounts) the Audit Commission and the District Auditor may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Contractor or the Issuer and any sub-contractor and may require the Contractor or the Issuer and any sub-contractor to produce such oral or written explanations as they consider necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under such Legislation in relation to the Contractor or the Issuer is not a function exercisable under this Agreement.

### **55.5 Exploitation of Information**

The Contractor shall not (and shall procure that the Issuer shall not) make use of this Agreement or any information issued or provided by or on behalf of the City Council in connection with this Agreement otherwise than for the purpose of this Agreement, except with the written consent of the City Council.

### **55.6 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 (and shall procure that the Issuer 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 City Council.

#### **55.7 Expiry**

On or before the Expiry Date, the Contractor shall (and shall procure that the Issuer shall) ensure that all documents or computer records in its possession, custody or control, which contain information relating to Service Users including any documents in the possession, custody or control of a Sub-contractor, are delivered up to the City Council.

#### **55.8 Disclosure by Audit Commission**

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.

#### **55.9 Official Secrets Act**

The provisions of this clause 55 (*Freedom of Information and Confidentiality*) are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

#### **55.10 Freedom of Information**

55.10.1 The Contractor acknowledges that the City Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the City Council's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in



clauses 55.10.2 to 55.10.8 (*Freedom of Information*) (inclusive) below.

55.10.2 Where the City Council receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the City Council does not hold itself the City Council shall refer to the Contractor such Request for Information that it receives as soon as practicable and in any event within five (5) Working Days of receiving a Request for Information and the Contractor shall:

55.10.2.1 provide the City Council with a copy of all such Information in the form that the City Council requires as soon as practicable and in any event within ten (10) Working Days (or such other period as the City Council acting reasonably may specify) of the City Council's request; and

55.10.2.2 provide all necessary assistance as reasonably requested by the City Council in connection with any such Information, to enable the City Council 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.

55.10.3 Following notification under clause 55.10.2 (*Freedom of Information*), and up until such time as the Contractor (or as applicable to the Issuer) has provided the City Council with all the Information specified in clause 55.10.2.1 (*Freedom of Information*), the Contractor (or as applicable to the Issuer) may make representations to the City Council 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 City Council shall be responsible for determining at its absolute discretion:

55.10.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;

55.10.3.2 whether Information is to be disclosed in response to a Request for Information, and

in no event shall the Contractor or the Issuer respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the City Council.

55.10.4 The Contractor shall ensure that all Information held on behalf of the City Council is retained for disclosure for at least five (5) years (from the date it is acquired) and shall permit the City Council to inspect such Information as requested from time to time.

55.10.5 The Contractor shall transfer to the City Council any Request for Information received by the Contractor as soon as practicable and in any event within two (2) Working Days of receiving it.

55.10.6 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the City Council may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Regulations.

55.10.7 In the event of a request from the City Council pursuant to clause 55.10.2 (*Freedom of Information*) above, the Contractor

shall as soon as practicable, and in any event within five (5) Working Days of receipt of such request, inform the City Council of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the City Council under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the City Council'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 ("**Appropriate Limit**") the City Council 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 ten (10) Working Days period for compliance shall be extended by such number of additional days for compliance as the City Council is entitled to under Section 10 of the FOIA. In such case, the City Council 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 City Council is itself entitled to reimbursement of such costs in accordance with the City Council's own FOIA policy from time to time.

55.10.8 The Contractor acknowledges that (notwithstanding the provisions of clause 55 (*Freedom of Information*)) the City Council 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 ("**Code of Practice**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor, the Issuer or the Project:

55.10.8.1 in certain circumstances without consulting with the Contractor; or

55.10.8.2 following consultation with the Contractor and having taken their views into account,

provided always that where clause 55.10.8.1 above applies the City Council shall, in accordance with the recommendations of the Code of Practice, draw this to the attention of the Contractor prior to any disclosure.

## **56. NOT USED**

## **57. DATA PROTECTION**

### **57.1 General**

57.1.1 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.

57.1.2 The Contractor and any sub-contractor shall only undertake processing of Personal Data reasonably required in connection with the Work and/or the Services and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

### **57.2 No Disclosure**

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

57.2.1.1 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

57.2.1.2 to the extent required under a court order,

provided that disclosure under clause 57.2.1 (*No Disclosure*) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 57.2.1 (*No Disclosure*) and that the Contractor shall give notice in writing to the City Council of any disclosure of Personal Data which either the Contractor or a sub-contractor is required to make under clause 57.2.1.2 (*No Disclosure*) immediately upon becoming aware of such a requirement.

57.2.2 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 but not limited to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

57.2.3 The City Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the Sub-Contractors referred to in clause 57.2.2 (*No Disclosure*). Within twenty (20) Working Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the City Council can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

### **57.3 Indemnity by Contractor**

The Contractor shall indemnify and keep indemnified the City Council against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any

breach of this clause 57 (*Data Protection*) by the Contractor and/or any act or omission of any Sub-Contractor.

## **58. INDEMNITIES GUARANTEES AND CONTRACTUAL CLAIMS**

### **58.1 Contractor's Indemnity**

The Contractor shall, subject to clause 58.3 (*Contractor not Responsible*), be responsible for, and shall release and indemnify the City Council, its employees, agents and contractors on demand from and against all liability for:

58.1.1 death or personal injury;

58.1.2 loss of or damage to property (including property belonging to the City Council or for which it is responsible ("**City Council Property**")) excluding the land and buildings forming part of the Assets; and

58.1.3 third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of, the design, construction (including demolition activities), operation or maintenance of the Dwellings and Properties or the performance or non-performance by the Contractor of its obligations under this Agreement or the presence on the City Council's property (including the Dwellings and Properties) of the Contractor, a sub-contractor of the Contractor, their employees or agents.

58.2 The Contractor shall, subject to clause 58.3 (*Contractor not Responsible*) be responsible for, and shall release and indemnify the City Council, 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 58.1.3 above) brought against the City Council or any City Council

Related Party for breach of statutory duty which may arise out of, or consequence of, a breach by the Contractor of its obligations under this Agreement to the extent there are no other remedies available to the City Council under this Agreement.

### 58.3 **Contractor not Responsible**

The Contractor shall not be responsible or be obliged to indemnify the City Council for:

58.3.1 any matter referred to in clauses 58.1.1 to 58.1.3 (*Contractor's Indemnity*) inclusive that arises as a direct result of the Contractor acting on the written instructions of the City Council;

58.3.2 any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the City Council, its employees, agents or contractors, or by the breach of the City Council of its obligations under this Agreement; and

58.3.3 in respect of any claims made pursuant to clause 58.1.2 in respect of City Council Property or clause 58.1.3 in respect of third party claims which the Contractor is required by this Agreement to insure, where the amount of any claim is in excess of the level of cover required by this Agreement (provided that the indemnity shall always extend to liability for any excess or deductible under any policy of insurance).

58.3.4 to the extent that any injury, loss, damage, cost and expense is the responsibility of the City Council pursuant to clause 58.5 (*Tenant or Third Party Damage*).

58.3.5 In respect of any liability referred to in clause 58.2 to the extent that, when taken together with any other liability resulting from the operation of clause 58.2 occurring within the previous five years, the amount of the Contractor's Uninsured Losses exceeds £750,000 (indexed).

#### 58.4 **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 other provision of this Agreement.

#### 58.5 **Tenant or Third Party Damage**

The City Council and Contractor will comply with the provisions of the Tenant and Third Party Damage Protocol in relation to Tenant Damage or Third Party Damage.

#### 58.6 **Responsibility for Related Parties**

Under this clause 58 (*Indemnities Guarantees and Contractual Claims*) the Contractor shall be responsible as against the City Council for the acts or omissions of the Contractor Related Parties as if they were the acts or omissions of the Contractor, and the City Council shall be responsible as against the Contractor for the acts or omissions of the City Council Related Parties as if they were the acts or omissions of the City Council.

#### 58.7 **Notification of Claims**

Where either party ("**Indemnified Party**") wishes to make a claim under this clause against the other ("**Indemnifying Party**"), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

#### 58.8 **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.



## **58.9 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.

## **58.10 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.

# **59. INSURANCE**

## **59.1 Requirement to Maintain**

59.1.1 The Contractor shall prior to the carrying out of any building or demolition work on a Site, take out and maintain or procure the taking out and maintenance of the insurances described in part 1 of schedule 12 (*Required 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.

59.1.2 The Contractor shall during the Services Period take out and maintain or procure the taking out and maintenance of the insurances described in part 2 of schedule 12 (*Required Insurances*) and any other insurances required by law.

## **59.2 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.

### **59.3 Nature of the Insurances**

With the exception of any insurances required by law, the insurances referred to in clauses 59.1.1 and 59.1.2 (*Requirement to Maintain*) above shall:

- 59.3.1 subject to clause 59.4 (*Co-Insured*) below, name the City Council as co-insured with any other party maintaining the insurance;
- 59.3.2 provide for non-vitiation protection in respect of any claim made by the City Council as co-insured in accordance with Endorsement 2 in part 3 of schedule 12 (*Required Insurances*);
- 59.3.3 contain a clause waiving the insurers' subrogation rights against the City Council and its employees and agents in accordance with Endorsement 2 in part 3 of schedule 12 (*Required Insurances*);
- 59.3.4 provide for thirty (30) days' prior written notice of their cancellation, non-renewal or amendment to be given to the City Council in accordance with Endorsement 1 in part 3 of schedule 12 (*Required Insurances*); and
- 59.3.5 in respect of the Physical Damage Policies provide for payment of any proceeds received by the Contractor to be applied in accordance with clause 60 (*Reinstatement and Change of Requirement after Insured Event*).

### **59.4 Co-Insured**

Wherever possible, the insurances referred to in clauses 59.1.1 and 59.1.2 (*Requirement to Maintain*) shall name the City Council as a co-insured for its separate interest.

#### **59.5 Evidence of Policies**

The Contractor shall provide to the City Council:

59.5.1 copies on request of all insurance policies referred to in clauses 59.1.1 and 59.1.2 (*Requirement to Maintain*) above (together with any other information reasonably requested by the City Council relating to such insurance policies) and the City Council shall be entitled to inspect them during ordinary business hours; and

59.5.2 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 59 (*Insurance*) and schedule 12 (*Required Insurances*).

#### **59.6 Renewal Certificates**

Renewal certificates in relation to any of the insurances referred to in clauses 59.1.1 and 59.1.2 (*Requirement to Maintain*) shall be obtained as and when necessary and copies (certified in a manner acceptable to the City Council) shall be forwarded to the City Council as soon as possible but in any event on or before the renewal date.

#### **59.7 Breach**

If the Contractor is in breach of clauses 59.1.1 and 59.1.2 (*Requirement to Maintain*) above, the City Council 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.

#### 59.8 **Notification of Claims**

The Contractor shall give the City Council notification within twenty (20) Working Days after any claim in excess of twenty five thousand pounds (£25,000) (indexed) on any of the insurance policies referred to in this clause accompanied by full details of the incident giving rise to the claim.

#### 59.9 **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.

#### 59.10 **Premia**

The insurance premiums referred to in clauses 59.1.1 and 59.1.2 (*Requirement to Maintain*) shall at all times be the responsibility of the Contractor.

#### 59.11 **City Council Approval**

The insurances referred to in this clause shall be effected with insurers approved by the City Council, such approval not to be unreasonably withheld or delayed.

#### 59.12 **Professional Indemnity Insurance**

In addition to the Required Insurances, the Contractor undertakes to procure that the Building Contractor, Principal Building Sub-Contractor and, members of the Professional Team (except in relation to the Principal Building Sub-Contractor and the members of the Professional Team, as otherwise provided in the Collateral Warranties) take out and maintain in force professional indemnity insurance ("**PI Insurance**") provided that such insurance is generally available in the market to members of the relevant insured's profession at commercially

reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the relevant insured's own claims record or other acts, omissions, matters or things peculiar to the relevant insured party will be deemed to be within the reasonable rates and, where such insurance is effected, and where such insurance is effected, to:

59.12.1 provide evidence satisfactory to the City Council (as and when reasonably required by the City Council) of the PI Insurance being in full force and effect from the date of this Agreement until the date twelve (12) years from and including the completion of all the Works (such evidence to include details of the cover) including confirmation of territorial limits, levels of excess, insurers, policy number and indemnity limit (which shall be a minimum of ten million pounds (£10,000,000)) either each and every loss or in the aggregate. (If in the aggregate then in any one (1) year of insurance a minimum of one (1) automatic reinstatement of the aggregate indemnity limit is required);

59.12.2 provide the City Council with notice of:

59.12.2.1 any cancellation of the PI Insurance not less than thirty (30) days prior to the relevant cancellation date; and

59.12.2.2 any adverse material changes to, or suspension of, cover relevant to the Project not less than thirty (30) days prior to the relevant change or suspension; and

59.12.3 inform the City Council as soon as reasonably practicable of any claim under the PI Insurance in respect of the Project in excess of one million pounds (£1,000,000), provide such information to the City Council as the City Council may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy.

### 59.13 **Broker's Letter of Undertaking**

59.13.1 On the date of this Agreement and within thirty (30) days following each renewal of Required Insurances, the Contractor shall deliver to the City Council a broker's letter of undertaking signed by the insurance broker to the Contractor in the Agreed Form as set out in part 4 of schedule 12 (*Broker's Letter of Undertaking*).

59.13.2 The Contractor shall procure that any broker(s) appointed during the currency of this Agreement shall:

59.13.2.1 owe the City Council such obligations and give to the City Council such warranties as are substantially the same as those set out in part 4 of schedule 12 (*Broker's Letter of Undertaking*) and in this clause 59; and

59.13.2.2 enter into an agreement in substantially the same form as that set out in part 4 of schedule 12 (*Broker's Letter of Undertaking*).

## 60. **REINSTATEMENT AND CHANGE OF REQUIREMENT AFTER INSURED EVENT**

### 60.1 **Application of Insurance Proceeds**

All insurance proceeds received under any policy referred to in paragraph 1 of part 1 and paragraph 1 of part 2 of schedule 12 (*Required Insurances*) ("**Physical Damage Policies**") shall be applied to repair, reinstate, replace each part or parts of the Assets in respect of which such proceeds were received.

## 60.2 **Joint Account**

All insurance proceeds paid under any Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of £25,000 (indexed) shall be paid into the Joint Insurance Account.

## 60.3 **Obligations**

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) ("**Relevant Incident**") in an amount in excess of £100,000 (Indexed):

60.3.1 the Contractor shall deliver as soon as practicable and in any event within twenty eight (28) days after the making of the claim a plan prepared by the Contractor for the carrying out of the works necessary ("**Reinstatement Works**") to repair, reinstate or replace ("**Reinstatement Plan**") the assets which are the subject of the relevant claim or claims in accordance with clause 60.4 (*Works Carried Out*) below. The Reinstatement Plan shall set out:

60.3.1.1 if not the Building Contractor, the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the City Council; and

60.3.1.2 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 City Council, which approval shall not be unreasonably delayed;

60.3.2 provided that the City Council is satisfied that the Reinstatement Plan will enable the Contractor to comply with clause 60.4 (*Works Carried Out*) below within a reasonable timescale:

60.3.2.1 the Reinstatement Plan will be adopted;

60.3.2.2 the Contractor shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan approved by the City Council;

60.3.2.3 prior to the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account ("**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 60.3.2.2 (*Obligations*) above, 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 City Council may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;

60.3.2.4 the City Council 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 60.3.2.2 (*Obligations*), 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;

60.3.2.5 the City Council undertakes to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan;

60.3.2.6 after the Reinstatement Plan has been implemented to the reasonable satisfaction of the City Council and in accordance with clause 60.4 (*Works Carried Out*) below the City Council shall permit withdrawal by the Contractor of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under clause 60.3.2.3 (*Obligations*) above, in respect of the Relevant Incident, together with any interest accrued; and

60.3.2.7 subject to the provisions of clause 58.1 (*Contractor's Indemnity*), the Contractor shall be solely responsible for the payment of any deficiency.

#### **60.4 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.

## **61. RISKS THAT BECOME UNINSURABLE**

### **61.1 Uninsurable Risks**

Nothing in this clause 61 (*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 or a Contractor Related Party.

### **61.2 Risks Become Uninsurable**

If a risk usually covered by 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 in each case required under this Agreement becomes Uninsurable then:

61.2.1 the Contractor shall notify the City Council of any risk becoming Uninsurable within five (5) Working Days of becoming aware of the same and in any event at least five (5) Working Days before expiry or cancellation of any existing insurance in respect of that risk; and

61.2.2 if both parties agree or it is determined in accordance with the Dispute Resolution Procedure that the risk is Uninsurable and that:

61.2.2.1 the risk being Uninsurable is not caused by the actions of the Contractor or any sub-contractor of the Contractor; and

61.2.2.2 the Contractor has demonstrated to the City Council 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).

### 61.3 Consequences

61.3.1 If the requirements of clause 61.2 (*Risks Become Uninsurable*) are satisfied, but the parties cannot agree as to how to manage or share the risk, then:

61.3.1.1 in respect of such third party liability insurance only the City Council shall (at the City Council's option) either pay to the Contractor an amount equal to the amount calculated in accordance with clause 42 (*Compensation on Termination for Force Majeure*) and the Agreement will terminate, or elect to allow the Agreement to continue and clause 61.3.1.2 (*Consequences*) below shall thereafter apply in respect of such risk;

61.3.1.2 in respect of such contractors' 'all risks' insurance, property damage insurance, third party liability insurance (if the City Council elects to allow the Agreement to continue in accordance with clause 61.3.1.1 (*Consequences*), delay in start up and business interruption insurance (but not loss of profits) or statutory insurances the Agreement shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the City Council shall (at the City Council's option) either pay to the Contractor an amount equal to 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 42 (*Compensation on Termination for Force Majeure*) plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable whereupon the Agreement will terminate;

61.3.1.3 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

- 61.3.1.4 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 (4) 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;
- 61.3.1.5 in respect of any period between the City Council receiving notification in accordance with clause 61.2.1 that a TPL Risk has become Uninsurable and the City Council's notification to the Contractor in accordance with clause 61.3.1.1 in respect of such risk then, provided it is ultimately agreed or determined that the requirements of clause 61.2.2 are satisfied in respect of the Uninsurable TPL Risk and subject to clause 61.3.1.6 below, clause 61.3.1.2 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 this period; and
- 61.3.1.6 clause 61.3.1.5 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 61.2.2 are satisfied in respect of the Uninsurable TPL Risk and/or (b) meeting with the City Council to discuss the means by which the risk should be managed.

#### 61.4 **Contractor's Option**

If pursuant to clause 61.3.1.2 (*Consequences*), the City Council elects to make payment to the Contractor (such that the Agreement will terminate) ("**Relevant Payment**") the Contractor shall have the option (exercisable in writing within twenty (20) Working Days of the date of such election by the City Council ("**Option Period**")) to pay to the City Council 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 City Council), 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.

#### 61.5 **Increase in Insured Amounts**

The limit of indemnity and the maximum deductibles for each of the Required Insurance policies shall be indexed, provided such limits of indemnity shall only be increased on each renewal date such that the limit that is indexed becomes equal to or exceeds the next whole insurable amount available in the insurance market.

#### 61.6 **Risk Ceasing to be Uninsurable**

61.6.1 Where a risk has become Uninsurable, the Contractor shall approach the insurance market on a regular basis and in any event at intervals of not more than three (3) months to establish whether the relevant risk remains Uninsurable.

61.6.2 Where a risk which was previously Uninsurable ceases to be so either party may notify the other of the same. If the parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that such risk is no longer Uninsurable, the Contractor shall forthwith take out and maintain insurance

in accordance with the requirements of this Agreement in respect of the risk.

## 61.7 Unavailability of Terms and Conditions

61.7.1 If, upon the renewal of any insurance which the Contractor is required to maintain or to procure the maintenance of pursuant to this Agreement:

61.7.1.1 any Insurance Term is not available to the Contractor in the worldwide insurance market with reputable insurers of good standing; and/or

61.7.1.2 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) then clause 61.7.2 (*Unavailability of Terms and Conditions*) shall apply.

61.7.2 If it is agreed or determined that clause 61.7.1 (*Unavailability of Terms and Conditions*) applies then the City Council shall waive the Contractor's obligations in clause 59.1 (*Requirement to Maintain*) and/or schedule 12 (*Required 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 61.7.1 (*Unavailability of Terms and Conditions*) continue to apply to such Insurance Term.

61.7.3 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 part 6 of schedule 12 (*Insurance Premium Risk Sharing*).

61.7.4 The Contractor shall notify the City Council as soon as reasonably practicable and in any event within five (5) days of becoming aware that clause 61.7.1.1 and/or clause 61.7.1.2 (*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 City Council with such information as the City Council 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.

61.7.5 In the event that clause 61.7.1.1 and/or clause 61.7.1.2 (*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 (4) months to establish whether clause 61.7.1.1 and/or clause 61.7.1.2 (*Unavailability of Terms and Conditions*) remain applicable to the Insurance Term. As soon as the Contractor is aware that clause 61.7.1.1 and/or clause 61.7.1.2 (*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

61.7.6 All references in this clause 61.7 (*Unavailability of Terms and Conditions*) to an Insurance Term shall include reference to any element or component of any such Insurance Term.

## **62. DISPUTE RESOLUTION**

### **62.1 Disputes**

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

### **62.2 Consultation**

If a dispute arises in relation to any aspect of this Agreement, the Contractor and the City Council shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

### **62.3 Adjudication**

Without prejudice to clause 62.2 (*Consultation*) above, either party may give the other notice of intention to refer the dispute to adjudication and the adjudicator shall be selected in accordance with clause 62.4 (*Identity of Adjudicator*) ("**Adjudicator**").

## **62.4 Identity of Adjudicator**

62.4.1 The parties shall select and agree an Adjudicator provided always that the Adjudicator shall be suitably qualified and experienced (having regard to the nature of the dispute).

62.4.2 If the City Council and the Contractor are unable to agree on the identity of the expert to be appointed as the Adjudicator, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert within two (2) Working Days of any application for such appointment by either party.

## **62.5 Submission of Arguments**

Within five (5) Working 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.

## **62.6 Adjudicator's Decision**

In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty (20) Working Days of appointment (or such other period as the parties may agree after the reference, or thirty (30) Working 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.

## **62.7 Adjudicator's Costs**

Subject to clause 62.17 (*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.

#### **62.8 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.

#### **62.9 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.

#### **62.10 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 55 (*Freedom of 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.

#### **62.11 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.

#### 62.12 Reference to the Courts

Either party may (within ninety (90) calendar days of receipt of the Adjudicator's decision or where the Adjudicator fails to give a decision pursuant to clause 62.6 (*Adjudicator's Decision*)) give notice to the other party of its intention to refer the dispute to the English courts for final determination.

#### 62.13 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 delivered under this clause unless and until revised, cancelled or varied by the court.

#### 62.14 Similar Disputes

If any dispute arising under this Agreement raises issues which relate to:

62.14.1 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 ("**Building Contract Dispute**"); or

62.14.2 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 the

Responsive Repairs and Cyclical Maintenance and Renewal Contractor under the Responsive Repairs and Cyclical Maintenance and Renewal Contract ("**Responsive Repairs and Cyclical Maintenance and Renewal Contract Dispute**"),

then the Contractor may include as part of its submissions made to the Adjudicator or to the Arbitrator, where the dispute is referred to arbitration, submissions made by the Building Contractor or Responsive Repairs and Cyclical Maintenance and Renewal Contractor (as appropriate).

#### **62.15 Jurisdiction over Sub-Contractors**

The Adjudicator, as appropriate, shall not have jurisdiction to determine the Building Contract Dispute or the Responsive Repairs and Cyclical Maintenance and Renewal Contract Dispute but the decision of the Adjudicator shall be binding on the Contractor and the Building Contractor insofar as it determines the issues relating to the Building Contract 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.

#### **62.16 Sub-Contractors' Submissions**

62.16.1 Any submissions made by the Building Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor shall:

62.16.1.1 be made within the time limits applicable to the delivery of submissions by the Contractor; and

62.16.1.2 concern only those matters which relate to the dispute between the City Council and the Contractor under this Agreement.

## **62.17 Costs**

62.17.1 Where the Building Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor makes submissions in any reference before:

62.17.1.1 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 City Council and two-thirds (2/3) by the Contractor; and

62.17.1.2 the Arbitrator, the costs of the arbitration shall be in the discretion of the Arbitrator.

## **62.18 City Council's Liability**

The City Council shall have no liability to the Building Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor arising out of or in connection with any decision of the Adjudicator or Arbitrator or in respect of the costs of the Building Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor in participating in the resolution of any dispute under this Agreement.

## **62.19 Access to Documents**

The Contractor shall not allow the Building Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor access to any document relevant to the issues in dispute between the City Council and the Contractor save where:

62.19.1 the document is relevant also to the issues relating to the Building Contract Dispute or the Responsive Repairs and Cyclical Maintenance and Renewal Contract Dispute as the case may be; and

62.19.2 the Contractor has first delivered to the City Council a written undertaking from the Building Contractor and/or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor (as appropriate) addressed to the City Council 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 Arbitrator or any professional adviser engaged by the Building Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor (as appropriate) to advise in connection with the dispute.

### **63. 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.

### **64. INTELLECTUAL PROPERTY**

#### **64.1 Project Data**

The Contractor grants to the City Council or shall procure the grant to the City Council 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:

64.1.1 the City Council providing the Dwellings and/or Properties its duties under this Agreement and/or any statutory duties (including, for the avoidance of doubt, the City Council's

housing management function) which the City Council may have; and

64.1.2 following termination of this Agreement, the design or construction of the Dwellings and/or Properties, the operation, maintenance or improvement of the Dwellings and/or Properties 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.

#### 64.2 **Ancillary Intellectual Property Rights**

Ownership of Ancillary Intellectual Property Rights shall not be affected by this Agreement and accordingly:

64.2.1 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

64.2.2 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 City Council 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.

#### 64.3 **Assignment of Generated Intellectual Property Rights**



All Generated Intellectual Property Rights created by or on behalf of either party shall be owned by the City Council. Accordingly, the Contractor:

64.3.1 assigns to the City Council 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

64.3.2 agrees to assign to the City Council with full title guarantee all other Generated Intellectual Property Rights.

The assignments made under this clause 64.3 (*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:

64.3.3 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 City Council under the terms of clause 64.3 (*Assignment of Generated Intellectual Property Rights*) above; and

64.3.4 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 City Council full right, title and interest in the Generated Intellectual Property Rights and for conferring on the City Council all rights of action in respect of any claim for infringement by third parties. The Contractor grants to the City

Council a power of attorney for the City Council to execute such further documents on behalf of the Contractor should the Contractor fail to do so.

#### **64.4 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:

64.4.1 use all reasonable endeavours to procure for the benefit of the City Council, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the City Council or its nominee to access and otherwise use (subject to the payment by the City Council 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

64.4.2 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.

#### **64.5 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 64.4 (*Computer Data and Materials*) in accordance with Good Industry Practice. Without prejudice to this obligation, the Contractor shall submit to the City Council's Representative for approval its proposals for the back-up and storage in safe custody of the data, materials and documents and the City Council 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 City Council'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 City Council's Representative, who shall be entitled to object on the basis set out above.

#### **64.6 Contractor Indemnity**

Where a claim or proceeding is made or brought against the City Council 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 of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Right by or on behalf of the City Council otherwise than in accordance with the terms of this Agreement, the Contractor shall indemnify the City Council at all times from and against all such claims and proceedings and the provisions of clause 58 (*Indemnities Guarantees and Contractual Claims*) shall apply.

#### **64.7 Licence to Contractor**

The City Council 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 City Council.

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

#### **65.1 Restrictions on Transfer of the Agreement by the City Council**

The rights and obligations of the City Council 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 City Council under this Agreement being:

65.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;

65.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the City Council under this Agreement and the Direct Agreement; or

65.1.3 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 City Council 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 City Council under this Agreement and the Direct Agreement.

## **65.2 Restriction on the Contractor**

Subject to clause 65.3 (*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 City Council.

## **65.3 Exception**

65.3.1 The provisions of clause 65.2 (*Restriction on the Contractor*) do not apply to the grant of any security for any loan made to the Contractor under the Financing Agreements.

65.3.2 Subject to clause 28.2 (*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-Contract under the relevant Sub-Contract and whose identity has been notified to the City Council (and who the City Council has approved, such approval not to be unreasonably withheld, and to be given (or withheld) within twenty (20) Working 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 City Council approves the Sub-Contractors appointed by the Contractor as at the Commencement Date.

#### **65.4 Contractor's Obligations**

The Contractor shall perform its obligations under and observe all the terms of any Sub-Contract with a Sub-Contractor.

#### **65.5 Sub-Contractors**

Nothing in this Agreement shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the City Council at any establishments of the City Council.

#### **65.6 Replacement of Sub-Contractors**

65.6.1 On not more than two (2) occasions during the Contract Period on the substitution or replacement of a defaulting Sub-Contractor or a defaulting sub-contractor to the Sub-Contractor,

the Contractor may elect that for the purposes of clause 37.4 (*Termination on Contractor Default*) only:

65.6.1.1 any accrued Unavailability Deductions; and/or

65.6.1.2 any accrued Performance Deductions; and/or

65.6.1.3 any warning notices or Final Warning Notices in respect of clause 38 (*Termination for Persistent Breach by the Contractor*); and/or

65.6.1.4 any Default Termination Points,

in each case relating to the relevant Works or 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 City Council on or before the appointment of any such substitute or replacement sub-contractor or sub-contractor whether it elects for this clause 65.6 to apply on that occasion.

65.6.2 Where an election is made pursuant to clause 65.6.1 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 37.4 (*Termination on Contractor Default*) only:

65.6.2.1 no Unavailability Deductions;

65.6.2.2 no Performance Deductions; and

65.6.2.3 no warning notices or Final Warning Notices in respect of clause 38 (*Termination for Persistent Breach by the Contractor*),

shall accrue for the purposes of sub-paragraphs (l), (m) and (n) inclusive of the definition of Contractor Default in respect of a

Works or Service during a period of two (2) months from the date on which that Works or Services are 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.

## **66. CORPORATE STRUCTURES**

### **66.1 Contractor Warranty**

The Contractor represents and warrants to the City Council that at the date of this Agreement the legal and beneficial ownership of the Contractor and Holdco is as set out in part 3 of schedule 10 (*Warranted Data*) and that, other than any Shareholder pre-emption rights, 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.

### **66.2 Notification**

66.2.1 Without prejudice to clause 66.5 (*Change in Ownership*), the Contractor shall provide the City Council with at least twenty (20) Working Days prior written notice of any Change in Ownership contemplated by the Contractor to enable the City Council to determine whether the City Council considers the transfer to be to an Unsuitable Third Party.

66.2.2 If the City Council 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 66.5.4.

66.2.3 Any dispute arising shall be dealt with in accordance with clause 62 (*Dispute Resolution*).

### 66.3 **City Council Request**

The City Council 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 twenty (20) Working Days of receipt of the City Council's request for details of any Change in Ownership occurring.

### 66.4 **Contractor's Awareness**

The Contractor's obligations under clauses 66.2 (*Notification*) and 66.3 (*City Council 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.

### 66.5 **Change in Ownership**

66.5.1 No Change in Ownership may occur during the Lock-in Period.

66.5.2 Any Change in Ownership arising as a consequence of:

66.5.2.1 the grant or enforcement of security in favour of the Senior Funders over or in relation to any of the shares of the Contractor, the Issuer or Holdco, provided that any document conferring security over any shares has been approved by the City Council (such approval not to be unreasonably withheld or delayed); or

66.5.2.2 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



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

shall be disregarded for the purpose of clause 66.5.1 (*Change in Ownership*).

66.5.3 Where, during the Lock-in Period, the holder of any shares in the Contractor or Holdco:

66.5.3.1 [REDACTED]

[REDACTED]

[REDACTED]

66.5.4 The Contractor shall obtain the City Council's prior written consent (which may be given subject to conditions) to any Restricted Share Transfer.

**67. FINANCIAL ADJUSTMENTS**

**67.1 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 67 (*Financial Adjustments*). Where for the purposes of this clause 67 (*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 City Council, 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:

67.1.1 any Change in Costs and Change in Revenue;

67.1.2 reasonable economic assumptions prevailing at the time; and

67.1.3 changes in the prospective technical performance of the Project arising as a result of the Relevant Event,

provided that the City Council 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, RPIX and the impact of Unavailability Deductions and Performance Deductions.

## 67.2 **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 City Council's share of any Refinancing Gain to which clause 81 (*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 67 (*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.

## 67.3 **No Better and no Worse**

67.3.1 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:

67.3.1.1 rights, duties and liabilities under or arising pursuant to performance of this Agreement, the Financing Agreements and the Sub Contracts; and

67.3.1.2 ability to perform its obligations and exercise its rights under this Agreement, the Financing Agreements, the Building Contract and the Responsive Repairs and Cyclical Maintenance and Renewal Contract,

so as to ensure that:

67.3.2 the Contractor is left in a position which is no better and no worse in relation to the Debt Service Cover Ratio and Loan Life Cover Ratio (in each case as defined in the Financing Agreements) and the Equity IRR, by reference to the version of the Base Case applicable immediately prior to the Relevant Event than had the Relevant Event not occurred; and

67.3.3 the ability of the Contractor to comply with this Agreement is not adversely affected or improved as a consequence of the Relevant Event.

#### **67.4 Replacement of Base Case**

Any Base Case produced following adjustments in accordance with this clause 67 (*Financial Adjustments*) shall, when it is approved by the City Council (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.

#### **67.5 Amendments to Logic and/or Formulae**

67.5.1 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.

67.5.2 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 data included in the Base Case immediately prior to amendment to ensure that the key ratios (to include [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]

**67.6 Copies of the Revised Base Case**

Following any change to the Base Case under the provisions of this clause 67 (*Financial Adjustments*), the Contractor shall promptly deliver a copy of the revised Base Case to the City Council 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.

**68. AUDIT ACCESS**

Notwithstanding the provisions of clause 76.3 (*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 City Council 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.

## **69. NO AGENCY**

### **69.1 No Partnership or Employment**

Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the City Council and the Contractor.

### **69.2 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 City Council and the Contractor shall not hold itself out as having authority or power to bind the City Council in any way.

### **69.3 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.

## **70. ENTIRE AGREEMENT**

### **70.1 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.

### **70.2 Acknowledgements**

Each of the parties acknowledges that:

70.2.1 subject to clause 6.5 (*City Council 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

70.2.2 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.

**71. NOTICES**

**71.1 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:

<b>CONTRACTOR</b>	<b>CITY COUNCIL</b>
Jon Hinchliff	Liz Cook, Chief Officer Statutory Housing (copied to the City Council's Representative at the address set out at clause 71.2 below (as amended from time to time in accordance with clause 71.3))

c/o Sweett Group, 169 Meanwood Road, Leeds, LS7 1JW	Environment & Neighbourhoods Directorate, 4th Floor, West Merrion House, 110 Merrion Centre, Leeds LS2 8BB
Fax: N/A	Fax: 0113 22 43543

## 71.2 Provision of Information to Representatives

Where any information or documentation is to be provided or submitted to the City Council'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:

<b>CONTRACTOR'S REPRESENTATIVE</b>	<b>CITY COUNCIL'S REPRESENTATIVE</b>
Jon Hinchliff	Dave Purdy
c/o Sweett Group, 169 Meanwood Road, Leeds, LS7 1JW	Navigation House George Mann Road Leeds LS11 8DJ
Fax: N/A	Fax: N/A

## 71.3 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.

## 71.4 Notices by Post

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



be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

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

71.4.2 by 11am on the next following Working Day, if sent after 4pm on a Working Day but before 9am on that next following Working Day.

## **72. 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.

## **73. WAIVER**

### **73.1 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.

### **73.2 Extent of Waiver**

No waiver under clause 73.1 (*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.

## **74. PUBLIC RELATIONS AND PUBLICITY**

### **74.1 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 City Council.

#### **74.2 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 City Council has given its prior written approval.

#### **74.3 Crest and logos**

The Contractor shall not, and shall procure that no Contractor Related Party shall, use any crest, logo, livery or trademark of the City Council without the prior written approval of the City Council (which may be withheld or given subject to conditions at its absolute discretion).

### **75. ADVERTISEMENTS**

The Contractor shall not exhibit or attach to any part of the Project Sites any notice or advertisement without the prior written permission of the City Council's Representative, save where otherwise required to comply with Legislation.

### **76. CONTRACTOR'S RECORDS**

#### **76.1 Records of Costs**

The Contractor shall:

76.1.1 at all times 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;

76.1.2 upon request by the City Council, provide a written summary of any of the costs referred to in clause 76.1.1 (*Records of Costs*), including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the City Council may reasonably require;

76.1.3 provide such facilities as the City Council may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause; and

76.1.3.1 at the request of the City Council, provide to the City Council any information provided by it to the Senior Funders during the Contract Period;

76.1.3.2 provide to the City Council copies of its annual report and accounts within thirty (30) days of publication; and

76.1.3.3 provide to the City Council a copy of the Base Case financial model at Financial Close and (as the same may be amended) within thirty (30) days of any amendment thereto.

## 76.2 **Books of Account**

The Contractor shall keep (and procure that its sub-contractors shall keep) books of account in accordance with best accountancy practice with respect to this Agreement showing in detail:

76.2.1 administrative overheads;

76.2.2 payments made to Sub-Contractors and to sub-contractors and any other operating costs;

76.2.3 capital and revenue expenditure; and

76.2.4 such other items as the City Council may reasonably require from time to time to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of this Agreement,

and the Contractor shall have (and procure that the sub-contractors shall have) the books of account evidencing the items listed in clauses 76.2.1 (*Books of Account*) to 76.2.4 (*Books of Account*) inclusive available for inspection by the City Council (and any expert) upon reasonable notice, and shall provide a copy of these to the City Council as and when requested.

### **76.3 Maintenance of Records**

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

76.3.1 a full record of all incidents relating to health, safety and security which occur during the term of the Agreement; and

76.3.2 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 76.3.1 (*Maintenance of Records*) and 76.3.2 (*Maintenance of Records*) available for inspection by the City Council upon reasonable notice, and shall present a report of them to the City Council as and when requested.

### **76.4 Auditor**

The Contractor shall permit all records referred to in this clause 76 (*Contractor's Records*) to be examined and copied from time to time by the City Council's auditor and their representatives and other representatives of the City Council.

## 76.5 Retention

The records referred to in this clause 76 (*Contractor's Records*) shall be retained for a period of at least five (5) years after the Contractor's obligations under the Agreement have come to an end.

## 76.6 Termination or Expiry

Upon termination or expiry of this Agreement, and in the event that the City Council 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 City Council to provide information relating to the Contractor's costs of operating and maintaining the Project.

## 76.7 Information Provision

The Contractor shall:

76.7.1 provide to the City Council on 31 March, 30 June, 30 September and 31 December each year a document listing all information provided by it to the Senior Funders during the preceding three (3) months and at the request of the City Council provide to the City Council any information provided by it to the Senior Funders during the Contract Period and any other information relating to the Project that the City Council may reasonably require; and

76.7.2 provide to the City Council copies of its annual report and accounts within twenty (20) Working Days of publication;

76.7.3 provide to the City Council a copy of the Base Case financial model at Financial Close and (as the same may be amended) within twenty (20) Working Days of any amendment thereto.

- 76.7.4 promptly upon the occurrence of a Financing Default notify the City Council of such default;
- 76.7.5 use all reasonable endeavours to assist the City Council in its preparation of any report required by the Department of Communities and Local Government or HM Treasury from time to time;
- 76.7.6 provide to both the City Council and HM Treasury (addressed to PF2@hmtreasury.gsi.gov.uk or such other address at HM Treasury may notify to the Contractor from time to time) a calculation of the equity internal rate of return (for both an actual cumulative return to the date of preparation and for the expected forecast return up to the Expiry Date) for the Project and for each of the Shareholders to be prepared using the Senior Finance Agreement Financial Model and calculated on a cash basis to include all Distributions and any other payments made to Shareholders in respect of fees. This is to be provided on, or within three months after, each 31 March and 30 September throughout the Contract Period (or such other 6 month reporting cycle as the parties may agree);
- 76.7.7 provide all information required by the City Council in connection with Changes, in accordance with the provisions of the Change Protocol; and
- 76.7.8 provide regular project reports in the Agreed Form in accordance with the Output Specification and/or the Payment Mechanism which are clearly written and include analysis of KPIs, detailed illustrations of the continuous improvement achieved and explanations of any failures suffered, planned maintenance (and associated FM unit cost information and lifecycle schedule), accompanied by appropriate graphic interpretations of the underlying performance data and

including explicit links to the actual deductions to be made and any warning notices accrued in accordance with the Payment Mechanism.

76.8 The City Council may, in the circumstances referred to in clause 76.7.4 (regardless of whether the Senior Funders 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 Funders attend, such meetings as the City Council may convene to discuss such Interim Project Report and the circumstances giving rise to it.

#### 76.9 **Confidentiality**

All information referred to in this clause 76 (*Contractor's Records*) is subject to the obligations set out in clause 55 (*Freedom of Information and Confidentiality*).

### **77. INTEREST ON LATE PAYMENT**

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the City Council or from the City Council to the Contractor under any provision of this Agreement is not paid within three (3) Working Days of the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) 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 a City Council Default provide the Contractor with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

## **78. 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 City Council 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.

## **79. LOCAL GOVERNMENT (CONTRACTS) ACT 1997**

### **79.1 Certification Requirements**

The Certification Requirements are intended to be satisfied by the City Council 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.

### **79.2 Contractor's Consent**

The Contractor hereby consents to the issue by the City Council of certificates under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Agreement and the Direct Agreement.

### **79.3 Failure to Issue a Certificate**

If a certificate is not issued by the City Council pursuant to clause 79.2 (*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 City Council within five (5) Working Days of the City Council failing to issue such a certificate to terminate this Agreement, whereupon the City Council shall pay to the Contractor an amount equal to the compensation that would be payable in accordance with clause 44 (*Compensation on Termination for City Council Default*) and



on termination for City Council Default pursuant to clause 37.3 (*Termination on City Council Default*).

#### **79.4 Relevant Discharge Terms**

The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1977 are set out in schedule 11 (*Relevant Discharge Terms*).

### **80. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in all respects in the accordance with the laws of England and Wales. Subject to clause 62 (*Dispute Resolution*), the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

### **81. REFINANCING**

#### **81.1 Requirement for City Council Consent**

The Contractor shall obtain the City Council's prior written consent to any Qualifying Refinancing and both the City Council and the Contractor shall at all times act in good faith with respect to any:

81.1.1 Refinancing; or

81.1.2 any potential or proposed Refinancing under clause 81.9 (*City Council's Right to Request Refinancing*).

#### **81.2 Share of Gain**

The City Council shall be entitled to receive:

81.2.1 where there is a reduction in the Margin from the Margin as shown in the Senior Financing Agreements as at Financial Close arising from a Qualifying Refinancing (or, in the case of a second or subsequent Qualifying Refinancing, from the Margin

as shown in the immediately preceding Qualifying Refinancing)  
a 90% share of the Margin Gain arising from the Qualifying  
Refinancing;

81.2.2 a share of any further Refinancing Gain (arising otherwise than  
from a reduction in Margin) from a Qualifying Refinancing, in  
respect of any Refinancing Gain (when considered in  
aggregate with all previous Qualifying Refinancings) as follows:

81.2.2.1 for a Refinancing Gain from £1 to £1 million, a 50%  
share;

81.2.2.2 for a Refinancing Gain of £1 million up to £3 million,  
a 60% share; and

81.2.2.3 for a Refinancing Gain in excess of £3 million a 70%  
share.

### **81.3 No Withholding or Delay**

The City Council 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 81.2 (*Share of Gain*).

### **81.4 Contractor Details**

The Contractor shall promptly provide the City Council 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 City Council 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).

## 81.5 **Receipt of Gain**

The City Council shall have the right to elect to receive its share of any Refinancing Gain (including any Margin Gain) as:

81.5.1 a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;

81.5.2 a reduction in the Unitary Charge over the remainder of the Contract Period; or

81.5.3 a combination of any of the above.

## 81.6 **Method of Calculation**

The City Council and the Contractor will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain (including any Margin Gain) and payment of the City Council's share of the Refinancing Gain (taking into account how the City Council has elected to receive its share of the Refinancing Gain under clause 81.5 (*Receipt of Gain*)). If the parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the City Council's share, the dispute shall be determined in accordance with the Dispute Resolution Procedure.

## 81.7 **Costs**

The Refinancing Gain (including any Margin Gain) shall be calculated after taking into account any breakage costs necessary to facilitate the Qualifying Refinancing together with 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 City Council will be paid to the City Council by the Contractor within twenty (20) Working Days of any Qualifying Refinancing. Such costs shall be allocated as between the

Margin Gain (if any) and the remaining Refinancing Gain (if any) pro rata.

## 81.8 **Notifiable Financings**

Without prejudice to the other provisions of this clause 81 (*Refinancing*) the Contractor shall:

81.8.1 notify the City Council 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

81.8.2 include a provision in the Financing Agreement (other than Subordinated Financing Agreements) whereby the Contractor is entitled to be informed of any proposals which the Senior Funders may have to refinance the Financing Agreements (other than Subordinated Financing Agreements).

## 81.9 **City Council Right to Request Refinancing**

81.9.1 If the City Council (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 City Council 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**").

81.9.2 The Refinancing Notice shall set out in reasonable detail the grounds upon which the City Council believes such funding terms to be available. The Contractor and the City Council shall meet to discuss the Refinancing Notice within twenty eight (28) days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. The City Council shall be entitled to

withdraw the Refinancing Notice at or before such a meeting, or within ten (10) days following the meeting.

81.9.3 If the City Council serves a Refinancing Notice which is not withdrawn pursuant to clause 81.9.2, then the Contractor shall:

81.9.3.1 act promptly, diligently and in good faith with respect to the potential Refinancing;

81.9.3.2 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 81.7 (*Costs*); and

81.9.3.3 either:

(a) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the City Council (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 City Council that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in clause 81.9.3.2 above and

(ii) initial drafts of any changes to this Agreement 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 81.9.3.2, provide evidence to the reasonable satisfaction of the City Council for such belief and evidence to the reasonable satisfaction of the City Council that the Contractor has complied with its obligations in clauses 81.9.3.1 and 81.9.3.2.

81.9.4 Following receipt of the information referred to in clause 81.9.3.3(a), the City Council shall (in its absolute discretion) either:

81.9.4.1 instruct the Contractor to implement the proposed Refinancing; or

81.9.4.2 instruct the Contractor to discontinue the proposed Refinancing,

provided that if the City Council reasonably considers that the requirements of clause 81.9.3.3(a) have not been satisfied, the City Council may require the Contractor to satisfy its obligations under clause 81.9.3.3(a) whereupon the provisions of clauses 81.9.3 and 81.9.4 shall apply as if the City Council had served a Refinancing Notice.

81.9.5 If the City Council instructs the Contractor to implement the proposed Refinancing:

81.9.5.1 the Contractor shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented;

81.9.5.2 such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and

81.9.5.3 the provisions of clauses 81.1 (*Requirement for City Council Consent*) to 81.8 (*Notable Financings*) shall apply.

81.9.6 If:

81.9.6.1 the City Council instructs the Contractor to discontinue the potential Refinancing pursuant to clause 81.9.4.2; or

81.9.6.2 the requirements of clause 81.9.3.3(b) are satisfied, then, the City Council 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 City Council within twenty eight (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 City Council 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 City Council has, by prior written agreement, approved the use of such internal management resource.

81.9.7 The City Council shall be entitled to issue a Refinancing Notice under clause 81.9.1 at any time but not more than once in any two (2) year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under clause 81.9.2 has been issued for the purpose of this clause 81.9.7.

## **82. SOLE REMEDY AND COMMON LAW RIGHTS**

### **82.1 Common Law Rights for the Contractor**

Without prejudice to any entitlement of the Contractor:

82.1.1 to specific performance of any obligation under this Agreement;  
or

82.1.2 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.

### **82.2 Sole Remedy**

Subject to:

82.2.1 any other express right of the City Council pursuant to this Agreement; and

82.2.2 the City Council'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 City Council pursuant to this Agreement or has been taken into account to calculate any



compensation payable by the City Council pursuant to clauses 42 (*Compensation on Termination for Force Majeure*), 43 (*Compensation on Termination for Contractor Default*), 44 (*Compensation on Termination for City Council Default*) or 45 (*Compensation on Corrupt Gifts, Fraud and Refinancing Breaches*);

the sole remedy of the City Council in respect of a failure to provide the Services in accordance with this Agreement shall be the operation of schedule 5 (*Payment Mechanism*).

### **82.3 No Restriction on Discretionary Remedies**

Nothing in clause 82.2 (*Sole Remedy*) shall prevent or restrict the right of the City Council to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

## **83. RIGHTS AND REMEDIES**

Where this Agreement provides specifically for any rights of a party on breach of the other party's obligations under this Agreement, the entitlement to exercise (and conferring of) those rights 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.

## **84. NO FETTER OF STATUTORY FUNCTIONS**

Save as otherwise expressly provided, the obligations of the City Council under this Agreement are obligations of the City Council 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 City Council in any other capacity, nor shall the exercise by the City Council of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the City Council to the Contractor.

**85. COUNTERPARTS**

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

**86. 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.

**In witness whereof** the duly authorised representatives of the parties hereto have executed this Agreement as a deed and delivered it on the date shown on the first page.

Executed as a Deed by affixing the Common Seal of Leeds )  
City Council in the presence of: )

Name .....

Signature .....

Job Title ..... (Public Private Partnerships Unit)

**EXECUTED** as a deed and )  
delivered by the Contractor )  
acting by two (2) directors or by )  
a director and its secretary: )

Director

Director/Secretary

**SCHEDULES**  
to the  
**PROJECT AGREEMENT**

relating to the  
Little London and Beeston Hill &  
Holbeck HRA Social Housing PFI  
Project

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## SCHEDULE 1

### Definitions

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

**"1985 Act"** means the Housing Act 1985;

**"1999 Act"** means the Local Government Act 1999;

**"Abandon"** means wholly or substantially wilfully ceases to carry out the Works contemplated by the Construction Programme for twenty (20) consecutive Working Days or during sixty (60) Working Days (whether consecutive or not) in any Contract Year and/or wilfully ceases to provide substantially all the Services for fifteen (15) consecutive Working Days or during thirty (30) Working 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;

**"Abortive Remedial Costs"** means any costs directly incurred by the Contractor in Rectifying alleged Unavailability in a Dwelling or Facility following the City Council's instruction so to do pursuant to paragraph 3.4(c) of the Payment Mechanism where it is agreed or subsequently determined that such Dwelling or Facility was not Unavailable;

**"Access Protocol"** means the protocol set out in appendix 1A;

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

**"Access Refusal Record"** has the meaning given to it in paragraph 4.1(a) of Part B of the Access Protocol;

**"Access to above ground floor levels"** means any access referred to in paragraph 1.8, appendix 2, annex 10 of the Output Specification;

**"Access to ground floor level"** means any access referred to in paragraph 1.7, appendix 2, annex 10 of the Output Specification;

**"Account Bank"** means BNY Mellon Corporate Trustee Services Limited a company incorporated in England and Wales under the registered number [REDACTED];

**"Adaptation Protocol"** means the protocol set out in appendix 1F;

**"Adaptations"** means any special adaptation to be added to or removed from a Dwelling to accommodate any special health or disability requirements of a Tenant, Leaseholder or proposed Tenant of such Dwelling or any member of his or her household including all cases covered by Mandatory Grant provisions under the Housing Grants, Construction and Regeneration Act 1996;

**"Additional Construction Reserve Account"** has the meaning given to it in the Collateral Deed as at the date of this Agreement;

**"Additional Permitted Borrowing"** means 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 City Council) 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 Security Trustee is not in material breach of its obligations under clause 11.4.3 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;
- (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 City Council has agreed that its liabilities on a termination may be increased pursuant to clause 47.3 (*Changes to Financing Agreements*),

shall not be counted as Additional Permitted Borrowing;

**"Additional Permitted Borrowings Limit"** means an amount equal to:

- (a) 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

- (b) 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"** means any land and/or property adjoining or in the neighbourhood of the Properties 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 62.3 (*Adjudication*);

**"Adjusted Estimated Fair Value of the Contract"** means the Estimated Fair Value of the Contract, less an amount equal to the aggregate of:

- (a) where relevant, any Post Termination Service Amount paid to the Contractor (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that the City Council is entitled to set off or deduct under clause 33.8 (*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, HoldCo or the Issuer (other than the Distributions Account) on the date that the Estimated Fair Value of the Contract is calculated;
- (ii) any insurance proceeds and other amounts owing to the Contractor, HoldCo or the Issuer (and which the Contractor, HoldCo or the Issuer 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), (iii) and (iv) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and
- (2) the City Council has received such amounts in accordance with this Agreement or such amounts are standing to the credit of the Joint Insurance Account.

**"Adjusted Highest Compliant Tender Price"** means 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 City Council is entitled to set off or deduct under clause 33.8 (*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, HoldCo or the Issuer (other than the Distributions Account) on the date that the highest priced Compliant Tender is received;
- (ii) any insurance proceeds and other amounts owing to the Contractor, HoldCo or the Issuer to the extent not included in (i) above;
- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (1) (i), (ii), (iii) and (iv) have not been directly taken into account in that Compliant Tender; and
- (2) the City Council has received such amounts in accordance with this Agreement or such amounts are standing to the credit of the Joint Insurance Account;

**"Administering Authority"** means Bradford Metropolitan District Council acting in its capacity as administrator of the Fund;

**"Administration Regulations"** means the Local Government Pension Scheme (Administration) Regulations 2008 as amended from time to time;

**"Admission Body"** means a transferee admission body for the purposes of regulation 6 of the Administration Regulations;

**"Adverse Rights"** means interests, rights, covenants, restrictions, stipulations, easements, customary or public rights, local land charges, mining or mineral rights, franchise, manorial rights and any other rights or interests in or over land in each case whether or not registered that would, if exercised, prevent or disrupt the carrying out of the Works and/or the provision of the Services;

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

**"Affiliate"** means in relation to any person, any Holding Company or 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, except that in relation to Uberior Infrastructure Investments (No 5) Limited "Affiliate", shall be defined as:

- (a) Uberior Infrastructure Investments (No 5) Limited and any other company which is its subsidiary or Holding Company or any subsidiary of such Holding Company;
- (b) any partnership or other entity of which any entity referred to in sub-paragraph (a) of this definition is general partner, a trustee or the principal manager (whether or not on its own or jointly with any other person or persons);
- (c) any nominee or trustee of any entity falling within sub-paragraph (a) or (b) of this definition acting in such capacity (whether on a change or nominee or trustee or otherwise);
- (d) any partnership, unit trust, open ended investment scheme or other investment fund in which any entity referred to in sub-paragraph (a) or (b) of this definition is a limited partner, member or investor; and
- (e) any entity which holds shares for groups of employees or former employees of any entity referred to in sub-paragraph (a) of this definition means in relation to any person any Holding Company or subsidiary of that person or any subsidiary of such Holding Company.

**"Affordability Criteria"** shall mean the criteria specified by the City Council in its Approval Criteria that relate to the affordability of a proposed Change to the City Council (in terms of developing a final price for the Medium Value Change or High Value Change);

**"AGE"** means Assured Guaranty (Europe) Limited whose registered office is at 1 Finsbury Square, London EC2A 1AE;

**"AGE Financial Guarantee"** means the financial guarantee issued or to be issued by AGE in respect of the Bonds;

**"AGM"** means Assured Guaranty Municipal Corporation with its principal place of business at 31 W. 52nd Street, New York, NY 10019;

**"AGM Financial Guarantee"** means the financial guarantee issued or to be issued by AGM in respect of the Bonds;



**"Agreed Form"** means 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"** means this agreement (including its schedules and appendices);

**"ALMO"** means each of West North West Homes Leeds and Aire Valley Homes Leeds each being an arm's length management organisation, or any arm's length management organisation which replaces them, and reference to **"ALMOs"** shall be construed accordingly;

**"Ancillary Intellectual Property Rights"** means 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 Service Report"** has the meaning given to it in clause 35.3 (*Annual Service Report*);

**"Annual Service Report Date"** means 28 February in each year of the Contract Period;

**"APB Distribution"** means 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;

"**appendix**" means an appendix to this Agreement;

"**Approval Criteria**" means the criteria against which any Medium Value Change or High Value Change will be evaluated by the City Council and which will be specified by the City Council in the City Council Change Notice and which shall be based on;

- (a) compliance with the City Council's specifications for the Change;
- (b) evidencing value for money;
- (c) the Affordability Criteria;
- (d) compliance with all relevant Legislation, Guidance and Consents;

and such Approval Criteria shall be reasonable and achievable taking into account Good Industry Practice and the scope of the required Change;

"**Approved Purposes**" means has the meaning given to it in clause 64.1 (*Project Data*);

"**Approved RDD Item**" means 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;

"**Asbestos Survey**" means a survey procured by the Contractor in accordance with the Asbestos Surveyor's Appointment in relation to Dwellings and Properties that are to be refurbished or demolished identifying actual or potential asbestos in any such Dwelling or Properties;

"**Asbestos Surveyor**" means Michael Dyson Associates Ltd of West House, Meltham Road, Honley, Holmfirth, West Yorkshire, HD9 6LB;

"**Asbestos Surveyor's Appointment**" means the parts of the Stock Condition Surveyor's Appointment pursuant to which the Asbestos Surveyor was appointed to carry out the Asbestos Survey;

"**Assets**" means all assets and rights to enable the City Council or a successor contractor to own, operate and maintain the Project in accordance with this Agreement including:

- (a) any land or buildings;

- (b) any equipment;
- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and any other contractual rights; and
- (f) any Intellectual Property Rights subject to and in accordance with clause 64 (*Intellectual Property*),

but excluding any assets and rights in respect of which the City Council is full legal and beneficial owner;

**"Assigned Employees"** has the meaning given to that term in clause 29.15 (*Retendering*);

**"Associated Company"** means 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, HoldCo or the Issuer shall include the Contractor, HoldCo and/or the Issuer (as applicable) 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;

**"Assured Guaranty"** means AGE and/or AGM;

**"At Risk Tenant"** means a Tenant or a member of the Tenant's household residing with the Tenant at the time when the relevant work is planned, who has a particular characteristic (which may include age, medical condition or illness (such as respiratory conditions, chronic or terminal illness) or disability (such as mobility issues, mental health issues, blindness, deafness) or household issues (such as very young children, elderly or frail)), which, having regard to the nature of the relevant works to be carried out at the Tenant's Dwelling would result in either:-

- (a) a risk to health and safety of that Tenant or member of the Tenant's household; or
- (b) a level of discomfort that is not reasonably acceptable to that Tenant or member of the Tenant's household;

**"Available"** means in relation to each Rented Dwelling, Leasehold Dwelling or Facility (subject always to the Payment Mechanism):

- (a) before the Full Services Commencement Date for that Rented Dwelling, Leasehold Dwelling or Facility that the Interim Availability Standards are all satisfied; or
- (b) from the Full Services Commencement Date for that Rented Dwelling, Leasehold Dwelling or Facility, that the Full Availability Standards are all satisfied and if the Rented Dwelling, Leasehold Dwelling or Facility is a New Build Property the New Build Availability Standards are all satisfied,

and the expression **Availability** and cognate expressions shall be construed accordingly;

**"Availability Certification Requirements"** means the relevant Conversion Certification Standard, New Build Certification Standard, Refurbishment Certification Standard or Facility and Communal Area Certification Standard;

**"Availability Standards"** means the standards specified in Annex 10 to the Output Specification;

**"Availability Standards (Full)"** means those Availability Standards marked with "Y" against them in the column headed "Full Standard" in the Availability Standards Table;

**"Availability Standards (Initial)"** means those Availability Standards marked with "Y" against them in the column headed "Initial Standard" in the Availability Standards Table;

**"Availability Standards Leasehold (Full)"** means the Availability Standards (Full) applicable to Leasehold Dwellings;

**"Availability Standards Leasehold (Initial)"** means the Availability Standards (Initial) applicable to Leasehold Dwellings;

**"Availability Standards Rented (Full)"** means the Availability Standards (Full) applicable to Rented Dwellings;

**"Availability Standards Table"** means the table at Annex 10 to the Output Specification;

**"Base Case"** means 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) attached at appendix 5 (*Base Case*);

[REDACTED]

**"Base Charge (BC<sub>n</sub>)"** means for each Environmental and Communal Works Area, the amount in pounds sterling as set out in column 4 to appendix 7 (*Environmental Works*) and column 5 to appendix 8 (*Communal Works*) of the Payment Mechanism;

**"Base Senior Debt Termination Amount"** means subject to clause 47.2 (*Changes to Financing Agreements*):

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date and which are payable by the Contractor, HoldCo or the Issuer under the Senior Financing Agreements in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and
- (b) all amounts including, the costs of early termination of the Guaranteed Investment Contract(s) and any Make-Whole Payment payable by the Contractor, HoldCo or the Issuer (or if the prepayment referred to below has not occurred by the Calculation Date, such Make-Whole Payment and other amounts that would have become payable if such prepayment occurred on the Calculation Date) to the Senior Funders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing) and/or, in the case of early termination of the Guaranteed Investment Contract(s) only, as a result of termination of this Agreement, subject to the Contractor, HoldCo or the Issuer and the Senior Funders mitigating all such costs to the extent reasonably possible (unless the amount or the formula for determining the amount of such costs is fixed in advance under the terms of the Senior Financing Agreements),

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 Distributions Account and the Joint Insurance Account) held by or on behalf of the Contractor, HoldCo or the Issuer 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 the Guaranteed Investment Contract(s) and other breakage costs, payable by the Senior

Funders to the Contractor, HoldCo or the Issuer 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 the Guaranteed Investment Contract(s) only, as a result of termination of this Agreement; and

- (iv) all other amounts (except insurance proceeds in respect of third party liabilities and other insurance proceeds to which the Contractor, HoldCo or the Issuer is not beneficially entitled) received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the City Council to the Contractor as a result of enforcing any other rights they may have;

**"Benchmarking Process"** means the process set out in paragraph 8 of Part 4 (High Value Changes) of the Change Protocol;

**"Benchmarking Report"** means the report produced by the Contractor in accordance with the requirements of paragraph 8 of the Part 4 (High Value Changes) (which shall, for the avoidance of doubt, include the information required by paragraph 8.2 of the Part 4 (High Value Change)) of the Change Protocol;

**"Benefits Regulations"** means the Local Government Pension Scheme (Benefits) Regulations 2008 as amended from time to time;

**"Best Value Authority"** has the meaning given to it by section 1 of the 1999 Act;

**"Best Value Duty"** means the duty imposed on the City Council by Section 3 of the 1999 Act in relation to, inter alia, any one (1) or more of the Services;

**"Best Value Inspector"** means an officer, agent or employee of the Audit Commission or other Relevant Authority empowered to inspect the City Council'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;

**"Best Value Performance Indicators"** means

<b>Indicator</b>	<b>Description</b>
National Indicator NI14 Avoidable contact	The average number of customer contacts per received customer request
National Indicator NI 158	% decent council homes CLG DSO
National Indicator NI 187 tackling fuel poverty	people receiving income based benefits living in homes with low energy efficiency rating Defra DSO
Former BVPI - BV 185	Percentage of response repairs where an appointment was made and kept
Former BVPI - BV72	Percentage of urgent repairs completed within government time limits
Former BVPI - BV73	Average time taken to complete non-urgent repairs
Local Performance Indicator 1	Percentage of emergency repairs completed on time
Local Performance Indicator 2	Percentage of urgent repairs completed on time
Local Performance Indicator 3	Percentage of routine repairs completed on time
Former BVPI BV211a	Percentage expenditure on planned to responsive maintenance
Formed BVPI BV211b	Proportion of expenditure emergency repairs and urgent repairs to non-urgent repairs
Local Performance Indicator 4	Percentage of emergency and urgent repairs as a proportion of all repairs reported

and any additional performance indicator as agreed between the Contractor and the City Council including but not restricted to any National Performance Indicator or any other performance indicators published in Guidance or Legislation as may be issued by the Secretary of State, the Audit Commission or any other competent authority from time to time;

**"Bonds"** mean the 5.069 per cent bonds due 30 September 2032 of the Issuer, issued at Financial Close, in the aggregate principal amount of £101,833,000;

**"Bond Trustee"** means BNY Mellon Corporate Trustee Services Limited a company incorporated in England and Wales under the registered number 02631386;

**"Bond Trust Deed"** means the trust deed made on or about the date of this Agreement between the Issuer, the Bond Trustee, AGM and AGE;

**"Boundary Treatments"** refer to those treatments to be provided by the Contractor in accordance with paragraphs 2.0 to 2.1, appendix 2, annex 10 of the Output Specification;

**"Building Contract"** means subject to clause 47.2 (*Changes to Project Documents*) the building contract in the Agreed Form between the Contractor and the Building Contractor relating to the Works;

**"Building Contract Dispute"** has the meaning given to it in clause 62.14 (*Similar Disputes*);

**"Building Contractor"** means Frank Haslam Milan & Company Limited (company registered number 00629404) of Keepmoat Ltd The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire, DN4 5PL or such other building contractor as the Contractor may, subject to clause 47.2 (*Changes to Project Documents*), appoint to carry out the Works;

**"Building Sub-Contractor"** means any sub-contractor appointed by the Building Contractor to undertake part of the Works;

**"Business Day"** means a day (other than a Saturday or a Sunday) on which banks are open for general business in London;

**"Calculation Date"** means the date falling twenty (20) Business Days after the Notice Date;

**"Capital Expenditure"** means 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;

**"Car Park"** means any car park to be provided by the Contractor in accordance with paragraph 1.9, appendix 2, annex 10 of the Output Specification;

**"Cases"** means a proceeding issued in a Court in England in respect of a Disrepair Action;

**"Catalogue of Low Value Changes"** and **"Catalogue"** means the schedule setting out:

(a) the prices and time periods for Low Value Changes;

(b) the Small Works Rates,

as is set out in appendix 1 to the Change Protocol, as shall be amended from time to time in accordance with paragraph 6 of Part 2 (Low Value Changes) of the Change Protocol;

**"CCTV Code"** means the code of practice for the operation of the CCTV Equipment to be prepared by the Contractor and submitted to the City Council in accordance with clause 32.9 (CCTV);

**"CCTV Equipment"** means the closed circuit television equipment installed at or to be installed at the Sites as part of the Works;

**"CDM Regulations"** means the Construction (Design and Management) Regulations 2007;

**"Certificate of Availability"** means a Certificate of Availability Rented (Full Standard), a Certificate of Availability Leasehold (Full Standard), a Certificate of Availability Facilities and Communal Areas (Full Standard), a Certificate of Completion (Environmental Works and Communal Works), a Certificate of Completion (Demolition Works) as the case may be;

**"Certificate of Availability Facilities and Communal Areas (Full Standard)"** means a certificate issued by the Independent Certifier in accordance with the Independent Certifier's Deed of Appointment stating the satisfaction, in relation to any Facility or Communal Area referred to in the certificate, of the Availability Certification Requirements, with the Full Availability Standards applying from the first day of the month following certification;

**"Certificate of Availability (Full Standard)"** means where the context so admits all of or together the Certificate of Availability Rented (Full Standard), Certificate of Availability Leasehold (Full Standard) and Certificate of Availability Facilities and Communal Areas (Full Standard);

**"Certificate of Availability Leasehold (Full Standard)"** means 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 Standards Leasehold (Full) with the Availability Standards Leasehold (Full) applying from the first day of the month following certification;

**"Certificate of Availability Rented (Full Standard)"** means 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 Completion (Demolition Works)"** means a certificate issued by the Independent Certifier in accordance with the terms of the Independent Certifier's Deed of Appointment stating the satisfaction, in relation to any Demolition Site, of the Demolition Works Certification Standard;

**"Certificate of Completion (Environmental Works and Communal Works)"** means a certificate issued by the Independent Certifier in accordance with the terms of the Independent Certifier's Deed of Appointment in respect of each Environmental and Communal Works Area (other than those Environmental and Communal Works Areas in respect of which a Final Certificate of Adoption will be issued) stating:

- (a) the satisfaction, in relation to any Environmental Works referred to in the certificate of the Environmental Works Certification Standard; and/or
- (b) the satisfaction, in relation to any Communal Works referred to in the certificate, of the Communal Works Certification Standard;

**"Certification Requirements"** means the requirements which must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;

**"Certification Standard"** means the Conversion Certification Standard, Demolition Works Certification Standard, Environmental Works Certification Standard, New Build Certification Standard or Refurbishment Certification Standard, as the case may be;

**"Cessation Date"** means any date on which the Contractor or the relevant Sub-Contractor ceases to be an Admission Body other than as a result of the termination of this Agreement or because it ceases to employ any Eligible Employees;

**"Change"** means any change, variation, extension or reduction in the Works and/or the Properties and/or the Services;

**"Change in Costs"** means 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:

- (a) the reasonable costs of complying with the requirements of clauses 16 (*Extensions of Time*), 52 (*Change in Law*), 54 (*City Council Step-In*) and/or 67 (*Financial Adjustments*), 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 City Council 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
- (i) liability to third parties and Sub-Contractors, including reasonable legal expenses on an indemnity basis;

**"Change in Law"** means the coming into effect after the date of this Agreement of:

- (a) Legislation, other than any Legislation which on the date of this Agreement has been published:
  - (i) in a draft Bill as part of a Government Departmental Consultation Paper;

- (ii) in a Bill;
  - (iii) in a draft statutory instrument; or
  - (iv) as a proposal in the Official Journal of the European Communities;
- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

**"Change in Ownership"** means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in (i) the Contractor; (ii) the Issuer; or (iii) Holdco (including the control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors or the rights to dividend); and/or
- (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 in Ownership;

**"Change in Project Costs"** means a fixed and final price for carrying out the relevant Change;

**"Change in Revenue"** means 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 Notice"** means a City Council Change Notice and/or Contractor Change Notice as the context shall require;

**"Change to Number of Dwellings by Tenure"** or **"CNDT"** means Statutory CNDT and/or a Voluntary CNDT;

**"Change Protocol"** means that procedure set out in schedule 26 (*Change Protocol*);

**"Change Protocol Deduction"** means a deduction from the Monthly Unitary Charge made in accordance with Part 9 of the Payment Mechanism;

**"City Council Alternative Accommodation"** shall have the meaning given to that term in paragraph 3.15 of the Payment Mechanism;

**"City Council Change"** means a Change that is initiated by the City Council by submitting a City Council Change Notice to the Contractor;

**"City Council Change Notice"** means a written notice submitted by the City Council requiring a Change (including in respect of Low Value Changes, a Low Value Change Request) and setting out the information specified in the relevant paragraph of the Change Protocol;

**"City Council Default"** means 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 City Council or other Relevant Authority;
- (b) a failure by the City Council to make payment of any amount of money exceeding £1,321,250 (one month's Unitary Charge) (indexed) that is due and payable by the City Council under this Agreement within twenty (20) Working 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 City Council 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 (2) (or more) months;
- (d) a breach by the City Council of clause 65.1 (*Restrictions on Transfer of the Agreement by the City Council*) occurs; or
- (e) a failure by the City Council to make a payment in excess of one hundred thousand pounds (£100,000) of the Contribution pursuant to clause 10.3.6 that is due and payable by the City Council under this Agreement within twenty (20) Working Days of service of a formal written demand by the Contractor, where the amount fell due and payable at least twenty (20) Working Days prior to the date of service of the written demand;

**"City Council Default Termination Sum"** means the amount payable in accordance with clause 44 (*Compensation on Termination for City Council Default*);

**"City Council Existing Employee"** means in relation to any service equivalent to any of the Services all those persons employed by the City Council or an ALMO under a contract of employment (excluding to avoid doubt (without limitation) any person engaged by the City

Council or an ALMO as an independent contractor or persons employed by any sub-contractor engaged by the City Council or an ALMO) who are wholly or substantially engaged in the provision of that service as at the Service Transfer Date;

**"City Council's Policies"** means the policies of the City Council referred to in schedule 13 (*City Council's Policies*);

**"City Council Property"** has the meaning given to it in clause 58.1 (*Contractor's Indemnity*);

**"City Council Related Party"** means: any officer, agent or employee of the City Council or either ALMO acting in the course of his office or employment and any sub-contractor engaged by the City Council or either ALMO in relation to the Services;

**"City Council's Protocols"** means together the:

- (a) Access Protocol;
- (b) Tenant Waiver Protocol;
- (c) Tenant Improvements Protocol;
- (d) Decant Protocol;
- (e) Disrepair Actions Protocol;
- (f) Adaptations Protocol
- (g) Tenant and Third Party Damage Protocol;
- (h) Litigation Protocol;
- (i) Trees Protocol;
- (j) Marketing and Media Protocol; and
- (k) ICT Protocol;

**"City Council's Representative"** means the representative appointed by the City Council pursuant to clause 12.4 (*City Council's Representative*);

**"City Council Stage 1 Confirmation"** has the meaning given in paragraph 3.2.1 of Part 4 (High Value Changes) of the Change Protocol;

**"City Council Stage 2 Confirmation"** has the meaning given in paragraph 6.1.1 of Part 4 (High Value Changes) of the Change Protocol;

**"City Council's Tree Policies"** means those policies of the City Council relating to trees set out in the internet vRoom operated by the City Council's legal advisors, DLA Piper UK LLP;

**"CNDT Adjustment Date"** means the Commencement Date and the date at the end of each period of six (6) months thereafter during the Contract Period;

**"CNDT Compensation"** means 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 28.6 (*Changes to Numbers of Dwellings by Tenure*);

**"CNDT Date"** means the date upon which the CNDT actually occurs in respect of a Dwelling;

**"CNDT Model"** means the specific model constructed to calculate the CNDT Compensation at schedule 5 (*Payment Mechanism*);

**"CNDT Notice"** means a notice serviced (and not withdrawn) by the City Council under clause 28.6.1 (*Change to Numbers of Dwellings by Tenure*) where a Dwelling is subject to a Statutory CNDT or Voluntary CNDT;

**"CNDT Review Date"** means the final day of each month during the Contract Period;

**"CNDT Standard"** has the meaning given to it in clause 28.6.6 (*Changes to Number of Dwellings by Tenure*);

**"CNDT Survey"** means has the meaning given to it in clause 28.6.6 (*Changes to Number of Dwellings by Tenure*);

**"Code of Practice"** has the meaning given to it in clause 55.10.8 (*Freedom of Information*);

**"Collateral Deed"** means the collateral deed entered into on or about the date of this Agreement between: (i) the Contractor, (ii) Issuer; (iii) Holdco, (iv) the Bond Trustee; and (v) the Security Trustee; (iv) AGM; and (v) AGE or without prejudice to clause 47.3.2 as the same may be amended in accordance with clause 47.3.1;

**"Collateral Warranty"** a collateral warranty executed as a deed between the City Council and (as the case may be), the Building Contractor, the Responsive Repairs and Cyclical Maintenance and Renewal Contractor, any Principal Building Sub-Contractor(s) and each

member of the Professional Team in the relevant form as set out in the relevant part of schedule 6 (*Collateral Warranties*);

**"Commencement Date"** means the date of this Agreement;

**"Commercially Sensitive Information"** means 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 23 (*Commercially Sensitive Information*) in each case for the period specified in column 2 of parts 1 and 2 of schedule 23;

**"Committed Stand-by Facility"** means a standby facility committed by the Senior Funders at or at a date later than the date of this Agreement or, without prejudice to clause 47.3.2 (*Changes to Financing Agreements*), as the same may be amended as allowed by clause 47.3.1 (*Changes to Financing Agreements*) for the purposes of funding any unforeseen cost overrun, increased expenses or loss of revenues to be incurred by the Contractor;

**"Common Parts"** means any:

- (a) sewers, drains, channels, ducts, watercourses, cables, pipes, wires and heating systems or other services installations within any building;
- (b) accesses, entrances, passages, landings and staircases to the extent that such are wholly within any building and for the avoidance of doubt access ways used by third parties that are external to any building are specifically excluded; 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"** means accesses, entrances, passages, landings and staircases used in common by residents of one or more Dwellings;

**"Communal Rooms and Facilities"** shall have the meaning given to that term in paragraphs 4.3 and 4.4, appendix 2, annex 10 of the Output Specification;

**"Communal Works"** means the Works to be carried out in accordance with Annex 9 Volume 1 of the Output Specification;

**"Communal Works Certification Standard"** means the standard for certification of Communal Works set out in Annex 7 (Certification Standard (Environmental Works)) and Annex 3 (Certification Standard (New Build)) of Volume 1 to the Output Specification;

**"Comparable Market"** means local authority HRA 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 projects of similar content or less than three (3) contractors operating such contracts the **Comparable Market** shall be the market for operation of HRA housing projects by a private sector operator;

**"Compensation Date"** means either:

- (a) if clause 43.2 (*Retendering Procedure*) applies, the earlier of:
  - (i) the date that the New Contract is entered into; and
  - (ii) the date on which the City Council pays the Adjusted Highest Compliant Tender Price to the Contractor; or
- (b) if clause 43.3 (*No Retendering Procedure*) applies, the date that the Adjusted Estimated Fair Value of the Contract has been agreed or determined;

**"Compensation Event"** means a breach by the City Council of any of its obligations under this Agreement;

**"Compensation Regulations"** means the Local Government (Discretionary Payments) Regulations 1996 (as amended) and the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulation 2000 (as amended);

**"Competitive Tendering Process"** means the process set out in paragraph 7 of Part 4 (High Value Changes) of the Change Protocol;

**"Compliant Tender"** means any tender submitted by a Compliant Tenderer that meets the qualification criteria notified under clause 43.2 (*Retendering Procedure*);

**"Compliant Tenderer"** means a tenderer who is a Suitable Substitute Contractor;



**"Confidential Information"** means:

- (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 1988; and
- (b) Commercially Sensitive Information;

**"Confirmation Notice"** means a written notice issued by the City Council pursuant to the relevant provision of the 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 the Change Protocol;

**"Consents"** means 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;

**"Construction Programme"** means the programme for the carrying out of the Works as contained in part 3 of schedule 3 (*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"** means the contingent or future liabilities to subscribe for equity or subordinated debt (if any) at the relevant time of the:

- (a) 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 Funders together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities;

**"Contract Month"** means 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"** means the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date;

**"Contract Year"** means a period of twelve (12) months commencing on 1 April, provided that:

- (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 Admission Agreement"** means an admission agreement in the form set out in schedule 24, or such other form as is required by the Administering Authority at the relevant time, entered into in accordance with regulation 6 of the Administration Regulations by the Administering Authority, the City Council and the Contractor or Sub-Contractor (as appropriate);

**"Contractor Change"** means a Change that is initiated by the Contractor by submitting a Contractor Change Notice to the City Council;

**"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 the Change Protocol;

**"Contractor Default"** means any one or more of the following events:

- (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, Issuer 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, Issuer or Holdco is appointed or possession is taken by or on behalf of any creditor of any property of the Contractor, Issuer 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, Issuer or Holdco;
- (f) an administration order is made, or an administrator is appointed in respect of the Contractor, Issuer or Holdco;
- (g) a breach by the Contractor of its obligations under clause 65.2 (*Restriction on the Contractor*) occurs;
- (h) a breach of clause 66.5 (*Change in Ownership*) or clauses 66.1 to 66.4 occurs;
- (i) the Contractor Abandons the Project at any time;
- (j) the Contractor has not commenced the Works by one (1) month after the Initial Services Commencement Date (Refurbishment);
- (k) five (5) Default Termination Points are outstanding in respect of the New Build Properties or five (5) Default Termination Points are outstanding in respect of the Refurbishment Works;
- (l) in any four (4) month period the City Council has been entitled to reduce the amount of the Unitary Charge by more than or equal to twenty percent (20%) through Unavailability Deductions;
- (m) in each and every month of any nine (9) month period the City Council has been entitled to reduce the amount of the Unitary Charge by more than or equal to eight (8%) through Performance Deductions;
- (n) a breach by the Contractor of its obligations to take out and maintain any of the Required Insurances;
- (o) failure to replace the Sub-Contractor or sub-sub Contractor following the occurrence of a Public Safety Incident in accordance with clause 25.3 (*Public Safety Incident*);

(p) a breach by the Contractor of its obligation under clause 30.1 (*Contractor to become an Admission Body*);

**"Contractor IT Systems"** means any and all information technology systems (including hardware and software) required to be used by the Contractor for the purposes of performing the Works and Services;

**"Contractor Related Party"**

- (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;
- (b) any Sub-Contractor or other sub-contractor of the Contractor and any of their officers, servants or agents; or
- (c) any person on or at any Dwellings or Properties at the express or implied invitation of the Contractor (other than a City Council Related Party),

and for the avoidance of doubt excluding any Leaseholder and any Tenant;

**"Contractor Response"** means the written response of the Contractor to a City Council Change Notice which shall include the information listed in the relevant paragraph of the Change Protocol;

**"Contractor Scheme"** means the retirement benefits schemes established or to be established under clause 30.9.1 (*Contractor Scheme*);

**"Contractor Stage 1 Response"** shall have the meaning given in paragraph 2 of Part 4 (High Value Changes) of the Change Protocol;

**"Contractor Stage 2 Response"** shall have the meaning given in paragraph 4 of Part 4 (High Value Changes) of the Change Protocol;

**"Contractor's Availability Notice"** means a notice issued by the Contractor in accordance with paragraph 3.4(b) of the Payment Mechanism;

**"Contractor's Contractual Method Statements"** means 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 Proposals*) and part 2 (*Service Delivery Proposals*) of schedule 3 (*Contractor's*

*Proposals*), any proposed variation to which the City Council may raise objections in accordance with the Review Procedure;

**"Contractor's Excess Rented and Leasehold Dwellings List"** means the list of Excess Rented and Leasehold Dwellings to be compiled and maintained by the Contractor in accordance with the Payment Mechanism;

**"Contractor's Proposals"** means the specific proposals for the demolition, construction and refurbishment of the Properties and provision of the Services to satisfy the Output Specification, as contained in schedule 3 (*Contractor's Proposals*);

**"Contractor's Record"** means the record to be maintained either in electronic or written form or partly in the one and partly in the other by the Contractor in accordance with the Service Delivery Plan and Part 3 of the Payment Mechanism to record Service Performance Failures and Unavailability;

**"Contractor's Representative"** means the person to be appointed by the Contractor pursuant to clause 12.1 (*Contractor's Representative*);

**"Contractor's Share"** means the percentage figure corresponding to the amount of Cumulative Capital Expenditure at the relevant time, as shown in the first column of the table set out in schedule 4 (*Change in Law - Contractor's Share*);

**"Contractor Termination Notice"** has the meaning given to it in clause 37.3.1 (*Termination on City Council Default*);

**"Contractor Warranted Data"** means the data and/or information relating to the Contractor and its Affiliates contained in part 3 of schedule 10 (*Warranted Data*);

**"Contribution"** has the meaning given in clause 10.3.2 (*Capital Works Contribution*);

**"Contribution Rate"** means the rate at which the Contractor or relevant sub-contractor shall make the Employer Contributions to the Fund and which shall be calculated as a percentage of the 'pensionable pay' (as defined in the LGPS (Benefits) Regulations) of an Eligible Employee but which shall exclude any payment required following the Contractor or relevant sub-contractor exercising any of its employer discretions under clauses 5.5 or 6.8 of the Contractor Admission Agreement, and any payment required following a termination valuation under clause 7.2 of the Contractor Admission Agreement (the Contractor or relevant sub-contractor shall remain at all times responsible for all contributions relating to the cost of enhanced benefits made at its discretion, any increase to the Contribution Rate

resulting from the award of pay increases by it in respect of the Eligible Employees that are in aggregate in excess of the pay increases assumed in the Fund's most recent actuarial valuation and any payment required pursuant to a termination valuation under clause 7.2 of the Contractor Admission Agreement);

**"Conversion Certification Standard"** means the standard for certification of a Conversion Dwelling set out in Annex 8 (*Certification Standards (Conversion)*) to the Output Specification;

**"Conversion Dwellings"** means a Dwelling to be converted pursuant to the terms of this Agreement as set out at Annex 5 to Section 1 and Annex 5 to Section 2 of Volume 2 to the Output Specification, and listed by address in part 1b of appendix 2;

**"Convictions"** means other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the Exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (S1 1975/1023) or any replacement or amendment to that Order);

**"Cumulative Capital Expenditure"** means the aggregate of:

- (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 Refurbishment Works Completion Date in respect of Refurbishment Properties or the Services Commencement Date in respect of New Build Properties; 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 52 (*Change in Law*);

**"Customer Satisfaction Survey"** has the meaning given in clause 35.2 (*Customer Satisfaction Survey*);

**"Customer Satisfaction Survey Date"** means the first Working Day in April in each Contract Year during the Services Period;

**"Cyclical Maintenance and Replacement Programme"** means the programme for Cyclical Maintenance and Renewal Works as contained in part 4 of schedule 3 (*Contractor's Proposals*) as may be varied from time to time in accordance with the Review Procedure;

**"Cyclical Maintenance and Renewal Works"** means the works relating to the maintenance of and renewal of elements of the Dwellings or Properties required to satisfy the Output Specification;

**"DCLG"** means the Department for Communities and Local Government;

**"Decant"** means to carry out the removal of a Tenant from a Dwelling into a Decant Dwelling followed by the option for that Tenant to return to the same Dwelling as a result of carrying out the Works or Services and the expressions **"Decanting"** and **"Decanted"** shall be construed accordingly;

**"Decant Dwelling"** means those dwellings provided by the Contractor pursuant to paragraph 2.1 of the Decant Protocol;

**"Decant Protocol"** means the protocol contained in appendix 1D;

**"Decant Refusal Event"** has the meaning given to it in paragraph 9 of the Decant Protocol;

**"Decent Homes Standard"** means the standard published by DCLG that aims to provide a minimum standard of housing condition for all those who are housed in the public sector;

**"Deduction"** means, in respect of any period, the Unavailability Deduction, the Performance Deduction or the Reporting Deductions, or any one of them (as the case may be) for that period and the expression **Deductions** shall be construed accordingly;

**"Deemed New Contract"** means an agreement on the same terms and conditions as this Agreement including any outstanding Contributions under clause 10.3 (*Capital Works Contributions*) as at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated during the Works Period, then the relevant Planned Services Commencement Dates and Milestones shall be extended by such period as would have been granted to allow a New Contractor to achieve completion of the Works at the Properties in question;
- (b) any accrued Deductions and/or warning notices and/or Default Termination Points shall, for the purposes of termination only, and without prejudice to the rights of the City Council to make financial deductions, 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"** means any increased margin that is payable to the Senior Funders or which accrues as a result of any payment due to the Senior Funders not being made on the date on which it is due;

**"Default Termination Point"** means a point awarded in accordance with clause 20.9 for failure by the Contractor to achieve a Milestone;

**"Defect"** any defect in any Dwelling or Property, or any part of them, attributable to:

- (a) defective design;
- (b) defective workmanship or defective materials, plant or machinery used in the construction of such building(s) having regard to Good Industry Practice and to applicable British standards and codes of practice current at the date of construction of the building comprising the relevant Property or part thereof;
- (c) defective installation of anything in or on a Dwelling or Property having regard to Good Industry Practice and to applicable British standards and codes of practice current at the date of such installation;
- (d) defective preparation of the site on which a Dwelling or Property is constructed; or
- (e) adverse ground conditions at the site on which a Dwelling or Property is constructed;

**"Demolition Properties"** means those properties on the Demolition Sites which are to be demolished by the Contractor in accordance with the terms of this Agreement as set out at Annex 1 and Annex 3 to Sections 1 and 2 of Volume 2 to the Output Specification;

**"Demolition Sites"** means those areas shaded pink on Plan # LCCFC BHH 8 - v2 and the properties marked in orange and yellow on Plan # LCCFC LL 8 - v2 (both plans contained at appendix 10 (*Project Sites*));

**"Demolition Works"** means those Works required to demolish Demolition Properties in accordance with Part 2 of the Output Specification;

**"Demolition Works Certification Standard"** means the standard for certification of Demolition Works set out in Annex 2 (*Demolition Properties*) to the Output Specification;

**"Design and Construction Plan"** means the plan set out in part 5 of schedule 3 (*Contractor's Proposals*);



**"Design Data"** means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Dwellings or Properties;

**"Direct Agreement"** means the direct agreement dated on or about the date of this Agreement and made between the City Council, the Contractor and the Security Trustee;

**"Direct Losses"** means 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"** means the EC Acquired Rights Directive 77/187 as amended;

**"Disclosed Data"** means information relating to the Project disclosed to the Contractor and its Shareholders and advisers including:

- (a) the Invitation to Submit Detailed Solutions and Invitation to Submit Refined Solutions;
- (b) all other documents forming part of the descriptive document;
- (c) the information contained (as at the date of Financial Close) in the locked internet vRoom operated by the City Council's legal advisers, DLA Piper UK LLP;
- (d) the documents or matters listed in schedule 16 (*Disclosed Data*);

**"Disclosed Matters"** shall have the meaning in paragraph 1 of schedule 28;

**"Disclosed Searches"** means the searches listed in part 2 of schedule 28;

**"Disclosed Title Matters"** means the matters set out in part 2 of schedule 28;

**"Disclosed Survey Data"** means the information and documents relating to the condition of the Project Sites and/or Properties disclosed to the Contractor by the City Council and listed in schedule 18 (*Disclosed Survey Data*);

**"Disclosure and Barring Service"** means the Disclosure and Barring Service (DBS) established under the Protection of Freedoms Act 2012 or any successor body thereto;

**"Discriminatory Change in Law"** means a Change in Law, the terms of which apply expressly to:

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

**"Disputed Amount"** has the meaning given to it in clause 33.5 (*Disputed Amounts*);

**"Dispute Resolution Procedure"** means the procedure set out in clause 62 (*Dispute Resolution*);

**"Disputed Notification"** has the meaning given to it in paragraph 3.4(c)(i) of the Payment Mechanism;

**"Disrepair Action"** means the service of any Disrepair Notice or the commencement of any other action (by way of claim or counterclaim) 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's Lease or otherwise;

**"Disrepair Action Cut Off Date"** means 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:

- (a) two (2) months after the Initial Services Commencement Date (Refurbishment); and
- (b) the date upon which a Dwelling has reached the Availability Standards Rented (Full) 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), or Availability Standards Leasehold (Full) (as appropriate);

**"Disrepair Actions Protocol"** means the protocol set out at appendix 1E;

**"Disrepair Notice"** means any 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;

**"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; or
  - (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;

**"Distributions Account"** has the meaning given in the Senior Financing Agreements;

**"DPA"** means the Data Protection Act 1998;

**"Dwelling"** means the Refurbishment Dwellings, Leasehold Dwellings and New Build Dwellings;

**"Dwelling Works"** means all or any of the Refurbishment Works, the Planned Maintenance and the Cyclical Maintenance and Renewal Work;

**"Early Demolition Sites"** means each of the sites listed in column 1 of the table in part 1 of schedule 27 (*Early Demolition*);

**"Early Demolition Works Completion Date"** means the relevant date set out in column 3 of the table in part 1 of schedule 27 (*Early Demolition*);

**"Early Demolition Works Standards"** means the standards referred to in column 2 of the table in part 1 of schedule 27 (*Early Demolition*);

**"EEA"** means 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;

**"Electrical Safety Systems"** shall have the meaning given to that term in paragraphs 6.5 to 6.9, 7.6 to 7.8 and 8.4 to 8.6, appendix 2, annex 10 of the Output Specification;

**"Electrical Security Systems"** shall have the meaning given to that term in paragraphs 7.1 to 7.6, appendix 2, annex 10 of the Output Specification;

**"Eligible Employees"**

- (a) the Transferring Employees who are active members of (or eligible to join) the LGPS on a Relevant Transfer Date; and
- (b) the Transferring Original Employees who are active members of (or eligible to join) either the LGPS or a broadly comparable scheme provided by their existing employer on a Relevant Transfer Date;

**"Emergency"** means 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;

**"Emergency Repair"** means a repair where urgent action is required to prevent or limit damage to health or safety of persons, property or personal belongings;

**"Employer Contributions"** means such payments as are due and payable by the Contractor or relevant sub-contractor under the Administration Regulations and the Contractor Admission Agreement in respect of each of the Eligible Employees;

**"Employee Costs"** means:

- (a) the costs incurred by the Contractor (or any relevant Sub-Contractor) associated with employing an employee from the date of expiry or earlier termination of this

Agreement to the date of dismissal of that employee by the Contractor (or relevant Sub-Contractor as appropriate) by reason of redundancy under clause 29.17.5; and

- (b) any compensatory payment, redundancy payment, notice pay or payment in lieu of notice, and any accrued but untaken holiday entitlements due to an employee or other payment or pension entitlement and which are required by Legislation or by contract or by award of any tribunal or court made or to be made to such employee and which arise as a result of their dismissal by reason of redundancy under clause 29.17.5

**"Employee Information"** means the information provided by the City Council to the Contractor in respect of Relevant Employees set out or described in part 2 of schedule 10 (*Warranted Data*);

**"Employee Liability Information"** means 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;

**"Environmental Information Regulations"** means 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;

**"Environmental and Communal Work Unavailability Deduction (ECUD<sub>t</sub>)"** means for each Environmental and Communal Works Area the amount in pounds sterling for Financial Year y calculated in accordance with paragraph 3.13 of the Payment Mechanism;

**"Environmental and Communal Works Area"** means each area listed in appendix 7 (*Environmental Works*) and appendix 8 (*Communal Works*) to the Payment Mechanism and, for the avoidance of doubt, where an area (for example 'Oatlands 1 - Lesser Low Rise') is listed twice within appendix 7 (*Environmental Works*) (once being in respect of 'adoption works') it shall be treated as two separate areas for the purposes of this definition;

**"Environmental Works"** means the Works to be carried out in accordance with Part 2.3 of Volumes 1 and 2 of the Output Specification;

**"Environmental Works Areas"** means the areas shaded green on Plan # LCCFC LL 4 - v3 and Plan # LCCFC BHH 4 - v3 (both plans contained at appendix 10 (*Project Sites*)) upon which Environmental Works are to be carried out;

**"Environmental Works Certification Standard"** means the standard for certification of Environmental Works set out in Volume 1 of Annex 7 (*Certification Standard (Environmental Works)*) to the Output Specification;

**"Escrow Account"** has the meaning given in the Senior Financing Agreements;

**"Equalities Legislation"** means the Race Relations Acts 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"** means the requirements set out in schedule 22 (*Equality Requirements*);

**"Equity IRR"** means 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;

**"Escrow Account"** has the meaning given in the Senior Financing Agreements;

**"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;

**"Estimated Fair Value of the Contract"** means the amount determined in accordance with clause 43.3 (*No Retendering Procedure*) that a third party would pay to the City Council 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;

**"Excess Rented and Leaseholder Dwellings"** means all Dwellings certified in accordance with clause 20 (*Certification of Availability*) in excess of the maximum numbers shown in appendix 6 of the Payment Mechanism;

**"Excusing Events"** means, to the extent that such impacts upon the Availability of a Dwelling and/or the performance of the Services, any of:

- (a) City Council Default;
- (b) Compensation Event;
- (c) the implementation of an City Council 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 Renewal Works;
- (f) the carrying out of Works or Services in accordance with the Output Specification 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 Damage or Third Party Damage provided the Contractor has complied with the Tenant and Third Party Damage Protocol;
- (h) as a result of the Contractor acting in accordance with a written instruction of the City Council issued in accordance with this Agreement; and
- (i) the occurrence of a 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 City Council));
  - (vi) restrictions imposed by the Senior Funders on the dates at which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreements and/or amounts released from the Escrow Account during the period up to the Final Full Services Commencement Date (Actual), as defined in the Senior Financing Agreements 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 Programme and which are notified in writing by the Contractor or the Senior Funders to the City Council prior to being given;
  - (vii) changes to milestones for drawdown and/or amounts released from the Escrow Account during period up to the Final Full Services Commencement Date (Actual), set out in the Senior Financing Agreements 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 Programme and which are notified in writing by the Contractor or the Senior Funders to the City Council prior to being given;
  - (viii) failure by the Contractor to obtain any consent by statutory bodies required by the Senior Financing Agreements; or
  - (ix) voting by the Senior Funders and the voting arrangements between the Senior Funders in respect of the levels of approval required by them under the Senior Financing Agreements;
- (d) any amendment, variation or supplement of any agreement approved by the City Council as part of any Qualifying Variation under this Agreement;
- (e) any sale of shares in the Contractor, Holdco or the Issuer by the Shareholders or securitisation of the existing rights and/or interests attaching to shares in the Contractor, Holdco or the Issuer 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 or the Issuer;

- (f) any sale or transfer of the Subordinated Lender's existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lender's existing rights and/or interests under the Subordinated Financing Agreements; or
- (g) any Qualifying Bank Transaction;

**"Existing Adaptation"** means a special adaptation at a Dwelling to accommodate any special health or disability requirements of a Tenant, Leaseholder or former Tenant of such Dwelling or any member of his or her household including, without limitation, all cases covered by Mandatory Grant provisions under the Housing Grants, Construction and Regeneration Act 1996;

**"Expiry Date"** means the date falling twenty (20) years and three (3) months after the Commencement Date;

**"External Doors"** shall have the meaning given to that term in paragraph 3.4 to 3.6, appendix 2, annex 10 of Volume 1 of the Output Specification;

**"Facility"** means any facility highlighted in the second column of appendix 3 of the Payment Mechanism and the expression **Facilities** shall be construed accordingly;

**"Facility and Communal Area Certification Standard"** means the standard for certification of Facilities and Communal Areas set out in Annex 31 (*Certification Standards (Communal Areas and Facilities - Refurbishment and New Build)*) of Volume 1 to the Output Specification;

**"Facility Base Charge"** means for each Facility the amount set out in column 4 of the table at appendix 3 of the Payment Mechanism;

**"Facility Charge (FC<sub>y</sub>)"** means for each Facility the amount in pounds sterling for Financial Year y calculated in accordance with paragraph 3.12 of the Payment Mechanism;

**"Facility Unavailability Deduction (FAUD<sub>t</sub>)"** means the deduction for Month t calculated in accordance with paragraph 3.12 of the Payment Mechanism;

**"Failure Type"** means the standard of failure determined by reference to appendix 2 of the Payment Mechanism;

**"Fair Value"** means 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"** means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

**"Final Certificate of Adoption"** means that certificate to be issued as detailed within item 6 of Annex 7 (Certification Standards) of the Output Specification in respect of each Environmental and Communal Works Area which is listed in appendix 7 (Environmental Works) and such listing includes reference to 'adoption works';

**"Final Employee List"** has the meaning given to it in clause 29.4.2 (*Employment Costs*);

**"Final Warning Notice"** has the meaning given to it in clause 38.2 (*Final Notice*);

**"Financial Close"** has the meaning given to it in the Collateral Deed as at the date of this Agreement;

**"Financial Guarantee Fee Letters"** has the meaning given in the Senior Financing Agreements;

**"Financial Guarantees"** means the AGM Financial Guarantee and/or the AGE Financial Guarantee;

**"Financial Year"** means:

- (a) the period from the Commencement Date to 31 March 2013; and
- (b) for any period following the expiry of the period referred to in paragraph (a) above, the period commencing on 1 April in any Year to 31 March in the following Year;

**"Financing Agreements"** all or any of the agreements or instruments entered into or to be entered into by the Contractor, HoldCo or the Issuer or any of their Associated Companies relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments entered into by the Contractor, HoldCo or the Issuer or any of their Associated Companies relating to the re-scheduling of their indebtedness or any Refinancing);

**"Financing Default"** means a default under the Senior Financing Agreement;

**"First Appointment"** has the meaning given to it in paragraph 1.1(b) of Part B of the Access Protocol;

**"First Appointment Form"** means the form referred to in paragraph 1.1(b) of Part B of the Access Protocol;

**"First Contractor"** means the person with whom the City Council initially contracted for the provision of services which are similar to the Services;

**"First Employee List"** has the meaning given to it in clause 29.4.1 (*Employment Costs*);

**"FOIA"** means 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"** means the occurrence after the date of this Agreement of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is as the result of the actions or breach of 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 42.2.1 (*Force Majeure Termination Sum*);

**"Full Annual Leasehold Dwelling Charge (FALDC<sub>y</sub>)"** means for each Leasehold Dwelling the amount in pounds sterling for Financial Year y calculated in accordance with paragraph 2.9 of the Payment Mechanism;

**"Full Annual Rented Dwelling Charge (FARDC<sub>y</sub>)"** means for each Rented Dwelling the amount in pounds sterling for Financial Year y calculated in accordance with paragraph 2.7 of the Payment Mechanism;

**"Full Annual Rented and Leasehold Dwelling Commencement Notice"** shall have the meaning given to it in paragraph 2.5(ii) of the Payment Mechanism;

**"Full Availability Standards"** means the availability standards set out in Annex 10 of Volume 1 of the Output Specification which apply in respect of any Rented Dwelling, Leasehold Dwelling, Communal Area or Facility after the Full Services Commencement Date for that Rented Dwelling, Leasehold Dwelling, Communal Area or Facility;

**"Full Base Leasehold Dwelling Charge (FBLDC)"** means [REDACTED] in respect of each Leasehold Dwelling;

**"Full Base Rented Dwelling Charge (FBRDC)"** means [REDACTED] in respect of each Rented Dwelling;

**"Full Services Commencement Date"** means the day of issue of the relevant Certificate of Availability (Full Standard);

**"Full Services Fee (FSF<sub>t</sub>)"** means the amount in pounds sterling for Month t calculated in accordance with paragraph 2.5 of the Payment Mechanism;

**"Full Services Period"** means in respect of a Property the period from the Full Services Commencement Date until termination or expiry of this Agreement;

**"Full Unavailability Deduction (FUD<sub>t</sub>)"** means the deduction for Month t calculated in accordance with paragraph 3.11 of the Payment Mechanism;

**"Fund"** means the West Yorkshire Pension Fund within the LGPS;

**"Future Service Provider"** has the meaning given to it in clause 29.12.4 (*Indemnities*);

**"GAD"** means the Government Actuary's Department;

**"General Change in Law"** means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;

**"General Repair"** shall have the meaning given to it in appendix 4 of the Payment Mechanism and clarified in Annex 14 of Volume 1 of the Output Specification;

**"Generated Intellectual Property Rights"** means 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;

**"GIC Provider"** means Lloyds TSB Bank plc or any person from time to time acting as a guaranteed investment contract provider to the Contractor in accordance with the terms of the Senior Financing Agreements;

**"Good Industry Practice"** means 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;

**"Ground Physical and Geophysical Investigation"** means the investigation of all the conditions of the Project Sites and of any extraneous materials in, on or under the Project Sites (including its surface and subsoil) to enable the Works to be carried out with due regard for those conditions and the seismic activity (if any) in the region of the Project Sites;

**"Guaranteed Investment Contract"** means the investment contract with a guaranteed return between the GIC Provider, the Security Trustee and the Contractor dated on or about the date hereof;

**"Guidance"** means any applicable guidance or directions with which the Contractor is bound to comply;

**"Handback Standard"** means the standard to which the Dwellings are to be handed back to the City Council on the Expiry Date or Termination Date (as the case may be) as set out in Annex 24 of Volume 1 to the Output Specification;

**"Help Desk"** means the telephone help desk to be established, operated and maintained by the Contractor in accordance with the Output Specification;

**"Highest Compliant Tender Price"** means the price offered by the Compliant Tenderer (if any) with the highest tender price and, if no Compliant Tenders are received, zero;

**"High Value Changes"** means a Change, which is not listed in the Catalogue, and which, in the reasonable opinion of the City Council, is likely to either cost more than ██████████ to implement, or require an adjustment to the Unitary Charge that is greater than 5% of the annual Unitary Charge (as the case may be);

"Holdco" means [REDACTED]  
[REDACTED]  
[REDACTED];

"**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;

"**Housing Health & Safety Rating System**" or "**HHSRS**" means the regime contained in the Housing Health & Safety System (England) Regulations 2005;

"**Housing Information**" means the information provided by the City Council to the Contractor in respect of the housing services currently provided by the City Council as set out or described in part 1 of schedule 10 (*Warranted Data*);

"**Housing IT Systems Data**" means any and all records, information and data relating to the Works, Services, Project, Dwellings or other Properties which may be generated, stored, saved or otherwise produced by the Contractor on or using the Contractor IT Systems for the purposes of the Project;

"**Housing Management Functions**" has the meaning given to it in clause 22.1 (*Commencement and duration of the Services*);

"**ICT Protocol**" means the protocol contained in appendix 1K;

"**Indemnified Party**" has the meaning given to it in clause 58.7 (*Notification of Claims*);

"**Indemnifying Party**" has the meaning given to it in clause 58.7 (*Notification of Claims*);

"**Independent Certifier**" the person appointed jointly by the City Council and the Contractor and Senior Funders to act as independent certifier to the Project in accordance with the Independent Certifier's Deed of Appointment;

"**Independent Certifier's Deed of Appointment**" means the deed of appointment of the Independent Certifier in the Agreed Form;

"**Independent Technical Advisor**" means a person who is independent of the City Council and any Contractor Related Party who is experienced in PFI funded projects in the social housing sector and has expertise in pricing works and/or services of the type required by the relevant Change;

**"Indexation Base Month"** means April 2010;

**"Indexation Factor"** shall be calculated in accordance with Paragraph 2.10 of the Payment Mechanism;

**"Indirect Losses"** means 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 Financing Agreements"** means the Financing Agreements put in place upon signature of this Agreement as listed in parts 1 and 2 of schedule 14 (*Financing Agreements*) copies of which have been initialled by the parties for the purposes of identification;

**"Initial Services Commencement Date (Refurbishment)"** means 30 September 2013 or such later date as may be allowed in accordance with this Agreement;

**"Instalment Date"** means, in relation to a payment due under the Senior Financing Agreements on a Scheduled Payment Date (as defined in the Senior Financing Agreements) prior to any acceleration, the date falling eight (8) Business Days before that Scheduled Payment Date;

**"Instalment Period"** means the period from the date on which the City Council serves a notice on the Contractor pursuant to clause 49.1 electing 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 instalments up to (and including) the date on which the City Council has irrevocably paid the Termination Sum and any interest accruing on any unpaid element of the Termination Sum in full;

**"Insurance Review Procedure"** means the procedure set out in paragraph 2 of part 6 of schedule 12 (*Insurance Premium Risk Sharing*);

**"Insurance Term"** means any terms and/or conditions required to be included in a policy of insurance by clause 59.1 (*Requirement to Maintain*) and/or schedule 12 (*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"** means any and all patents, trade marks, service marks, copyright, 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 Annual Leasehold Dwelling Charge (IALDC<sub>y</sub>)"** means for each Leasehold Dwelling the amount in pounds sterling for Financial Year y calculated in accordance with paragraph 2.8 of the Payment Mechanism;

**"Interim Annual Rented Dwelling Charge (IARDC<sub>y</sub>)"** means for each Rented Dwelling the amount in pounds sterling for Financial Year y calculated in accordance with paragraph 2.6 of the Payment Mechanism;

**"Interim Availability Standards"** means the availability standards set out in Annex 10 of Volume 1 of the Output Specification which apply in respect of any Rented Dwelling, Leasehold Dwelling and Facility prior to the Full Services Commencement Date for that Rented Dwelling, Leasehold Dwelling and Facility;

**"Interim Base Leasehold Dwelling Charge (IBLDC)"** means [REDACTED] in respect of each Leasehold Dwelling;

**"Interim Base Rented Dwelling Charge (IBRDC)"** means [REDACTED] in respect of each Rented Dwelling;

**"Interim Project Report"** means an interim report setting out any information reasonably requested by the City Council in respect of performance of the Project including but not limited to the reasons for the Financing Default and details of how the Contractor and Senior Funders intend to deal with it;

**"Interim Services Fee (ISF<sub>t</sub>)"** means the amount in pounds sterling for Month t calculated in accordance with paragraph 2.4 of the Payment Mechanism;

**"Interim Services Period"** means for each Refurbishment Property the period from the Initial Services Commencement Date (Refurbishment) until the Full Services Commencement Date for such Refurbishment Property;



**"Interim Unavailability Deduction (IUD<sub>t</sub>)"** means the deduction for Month t calculated in accordance with paragraph 3.10 of the Payment Mechanism;

**"Intervening Contract"** means a contract with the City Council for the provision of services which are similar to the Services, at times after they were provided under a contract with the First Contractor and before they are to be provided by the Contractor;

**"Irrecoverable Leaseholder Costs"** means the sum which represents the costs which are irrecoverable from Leaseholders as a consequence of:

- (a) failure to comply with Sections 19 and/or 20 of the Landlord and Tenant Act 1985 (as amended);
- (b) a defective notice served under Section 125 of the Housing Act 1985 after the Services Commencement Date (other than where the defect is due to the default of the City Council); and
- (c) costs in excess of the amount set down in the Local Housing Authorities Mandatory Reduction of Service Charges (England) Directions 1999;

**"Issuer"** means Sustainable Communities for Leeds (Finance) plc a company incorporated in England and Wales under company number 8594721;

**"Japanese Knotweed"** means a plant of the following species "fallopia japonica", "polygonum cuspidatum" or "reynoutria japonica";

**"Japanese Knotweed Infestation Areas"** means those areas identified as being infested with Japanese Knotweed at the Commencement Date as outlined in green on Plan # LCCFC LL 6 v2, Plan # LCCFC BHH 15 v1 and LCCFC BHH 16 v1 together with areas on Holbeck Towers and Coupland Road previously identified as being infested with Japanese Knotweed and outlined in green on Plan LCCFC BHH 13 v2 and LCCFC BHH 17 v1 (such plans contained in appendix 10 (*Project Sites*)). For the avoidance of doubt all areas identified include a buffer of seven (7) metres diameter from the existing parent plant;

**"Japanese Knotweed Treatment Programme"** means the regime of herbicidal treatment on the Japanese Knotweed Infestation Areas undertaken by the City Council or its specialist contractor as shown in the table below:

Location	Treatment Period	Started	Final Treatment	Treatment Type
Rear of 26-64 Carlton Gate	4 years	Spring 2009	Autumn 2012	Glyphosate and triclopyr herbicides
Base of 50-103 Carlton Towers	2 years	Spring 2009	Autumn 2010	Picloram based herbicide
Base of 62-121 Holbeck Towers	2 years	Spring 2009	Autumn 2010	Glyphosate herbicide
Fairfax	4 years	Spring 2009	Autumn 2012	Soil disturbance techniques plus application of glyphosate and triclopyr herbicides
Malvern Road	2 years	June 2012	June 2014	Picloram based herbicide

**"Joint Insurance Account"** the joint bank account in the names of both the City Council and the Contractor, having sort code [REDACTED] and account number [REDACTED] and held with Lloyds TSB Bank plc (regulated under the Financial Services Authority under registration number 2065);

**"Judicial Proceedings"** means any proceedings by way of judicial review and an application made pursuant to section 288 of the Town and Country Planning Act 1990 against or in respect of any decision action or omission of the local planning authority, the Secretary of State for the time being discharging the functions of the Secretary of State for the purposes of the Town and Country Planning Act 1990 (including an inspector appointed by such Secretary of State acting on his behalf), the court or any other tribunal person or forum, in each case relating to the planning approvals set out in schedule 29 (*Planning Risks*) (including the relevant planning procedure);

**"Junior Debt"** means all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;

**"Key Performance Indicator Standards or "KPI"** means each of the standards set out in the second column in appendix 2 of the Payment Mechanism, in respect of which the performance of the Contractor is measured for each part of the Services;

**"Kitchen Facilities"** shall have the meaning given to that term in paragraphs 4.5 to 5.3, appendix 2, annex 10 of the Output Specification;

**"Leaseholder"** means a person who holds a Leasehold Dwelling under a Long Lease;

**"Leasehold Dwellings"** means the Dwellings listed in part 2 of appendix 2 (List of Dwellings) and any Dwelling which becomes a Leasehold Dwelling as a result of CNDT;

**"Leaseholder's Lease"** means the Long Lease under which a Leaseholder holds a Leasehold Dwelling;

**"Legislation"** means:

- (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;

**"LGPS Regulations"** means the Administration Regulations, the Benefits Regulations and the Transitional Regulations, as amended from time to time;

**"Licence Plan"** means each of the plans included within the Annex to schedule 30 (*Licences*);

**"Liquid Market"** means 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 Funders 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;

**"Litigation Protocol"** means the procedure set out in appendix 1H;

**"Local Authority"** means 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 Government Pension Scheme"** or **"LGPS"** means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972 as amended from time to time;

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

**"Lock in Period"** means 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"** means a lease for a term in excess of 21 years;

**"Long Stop Date"** means the dates set out in appendix 7 and 8 of the Payment Mechanism;

**"Losses"** means 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;

**"Low Value Change"** means either:

(a) a Change listed in the Catalogue of Low Value Changes; or

in the case of:

(b) works of a minor nature or the provision of plant or equipment, not listed in the Catalogue of Low Value Changes, but which has an individual cost of less than or equal to [REDACTED], or as otherwise agreed from time to time; 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 City Council, of the implementation does not exceed [REDACTED],

when aggregated with all Low Value Changes of a similar nature, and falling within paragraphs (b) or (c) of this definition, in any period of six (6) months preceding such Change, exceeds £60,000, then such Change shall not be a Low Value Change, but shall be a Medium Value Change;

**"Low Value Change Request"** means a request for a Low Value Change in the form set out in appendix 3 to the Change Protocol;

**"Major Adaptation"** means an Adaptation which is not a Minor Adaptation;

**"Make-Whole Payment"** means:

- (a) in relation to termination of the Agreement under clause 37.3 (*Termination on City Council Default*), the payment to be made under and in accordance with Condition 6.4.1 (*Default Amount*) of the Bonds and the payment to be made under and in accordance with paragraph 3.4 (*Payments on Dates of Early Redemption or Acceleration*) of each of the Financial Guarantee Fee Letters;
- (b) in relation to termination of the Agreement under clause 37.1 (*Voluntary Termination by the City Council*) the payment to be made under and in accordance with Condition 6.4.2 (*Default Amount*) of the Bonds and the payment to be made under and in accordance with paragraph 3.4 (*Payments on Dates of Early Redemption or Acceleration*) of each of the Financial Guarantee Fee Letters;
- (c) where clause 49.5 (*City Council Default in Payment*) applies, the payment to be made under and in accordance with Condition 6.4.1 (*Default Amount*) of the Bonds and the payment to be made under and in accordance with paragraph 3.4 (*Payments on Dates of Early Redemption or Acceleration*) of each of the Financial Guarantee Fee Letters;
- (d) where clause 49.4 (*Payment of Outstanding Element*) applies, the payment to be made under and in accordance with Condition 6.4.2 (*Default Amount*) of the Bonds and the payment to be made under and in accordance with paragraph 3.4 (*Payments on Dates of Early Redemption or Acceleration*) of each of the Financial Guarantee Fee Letters; and
- (e) in relation to termination of the Agreement in any other circumstances, zero;

**"Management Agreement"** shall have the meaning given to that term in Section 27;

**"Margin"** means the rate of interest on the Bonds less the yield on the relevant reference gilt in place on issue of the Bonds;

**"Margin Gain"** means an amount equal to the lower of:

- (a) the Refinancing Gain; and

(b) the higher of:

i) Zero; and

ii) D - E

Where:

D = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the change to the Margin only in relation to the Refinancing and the senior debt repayment profile immediately prior to the Qualifying 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 over the remaining term of this Agreement following the Refinancing save that, where the replacement finance is bank debt, for the purpose of calculating the effect of the change to the Margin, the margin on the bank debt shall be the rate of interest on the bank debt less any mandatory cost or bank reference rate;

E = 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 over the remaining term of this Agreement following the Refinancing;

**"Market Tested Services"** has the meaning given to it in clause 27.1;

**"Market Testing"** means market testing in accordance with clause 27.3 (*Market Testing Procedure*);

**"Market Testing Proposal"** has the meaning given to it in clause 27.3.2 (*Market Testing Procedure*);

**"Market Testing Review Date"** has the meaning given to it in clause 27.1 (*Market Testing Review Dates*);

**"Market Value Availability Deduction Amount"** means for any month or part of a month, an amount equal to the Unavailability Deductions that were made to the Unitary Charge

under schedule 5 (*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 City Council incurring Rectification Costs or otherwise;

**"Marketing and Media Protocol"** means the protocol contained in appendix 1J;

**"Maximum Monthly Certification Cap"** shall have the meaning given to that term in paragraph 2.11 of the Payment Mechanism;

**"Maximum Unitary Charge"** means in respect of a month, the Unitary Charge payable in respect of that month before any deductions are made under clause 33 (*Payment Provisions*) but allowing for indexation in accordance with the Payment Mechanism;

**"Medium Value Changes"** means a Change, which is not a Low Value Change, and which, in the reasonable opinion of the City Council, is likely to either cost less than [REDACTED] to implement, or require an adjustment to the Unitary Charge that is less than 5 % of the annual Unitary Charge in the relevant Payment Year (as the case may be);

**"Milestone"** means any of the Refurbishment Milestones or New Build Milestones, as the case may be;

**"Milestone Date"** means each date listed in column 2 of the tables in schedule 19 (*Milestones*);

**"Minor Adaptation"** means those items of works referred to in paragraph 3.2.35 of the Output Specification or any other Adaptation works with a value of [REDACTED] or less;

**"Mobility Vehicle Store"** has the meaning given to it in paragraph 2.2, appendix 2, Annex 10 of the Output Specification;

**"Month"** means a calendar month;

**"Monthly Monitoring Report"** means the report referred to in paragraph 8.1 and in appendix 5 of the Payment Mechanism;

**"Monthly Unitary Charge (MUC<sub>t</sub>)"** means the amount in pounds sterling for Month *t* calculated in accordance with paragraph 2.3 of the Payment Mechanism;

**"Monthly Unitary Payment (MUPT)"** means the sum payable by the City Council to the Contractor in pounds sterling (if any) for Month calculated in accordance with paragraph 2. 1 of the Payment Mechanism;

**"Moratorium Period"** has the meaning given to it in clause 28.2 (*Management Agreements*);

**"Mutual Exchange of Dwellings"** means where two (2) Tenants each enter into a Transfer of Dwellings to the Dwelling of such other Tenant, with the agreement of the City Council;

**"National Performance Indicators"** means the single set of national indicators set out in *'The New Performance Framework for Local Authorities and 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 the performance of local authorities and local authority partnerships, as may be issued by any competent authority from time to time;

**"Net Present Value"** means 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 Availability Standards"** means the availability standards set out in Annex 10 of Volume 1 of the Output Specification which apply after the Full Services Commencement Date in respect of any Rented Dwelling, Leasehold Dwelling or Facility which is a New Build Property;

**"New Build Certification Standard"** means the standard for certification of New Build Properties set out in Annex 3 (*Certification Standard (New Build)*) of Volume 1 to the Output Specification;

**"New Build Dwellings"** means those Dwellings which are to be constructed as part of the New Build Properties;

**"New Build Milestone"** means for a particular Milestone Date the number of New Build Dwelling listed in column 1 of part 1 of schedule 19 (*Milestones*);



**"New Build Properties"** means the buildings comprising one or more Dwellings (together with any Common Parts) which are required to be constructed pursuant to this Agreement and which are more particularly set out in Section 1 to Part 5 of the Contractor's Proposals and **"New Build Property"** shall be construed accordingly;

**"New Build Sites"** means those sites shaded pink on Plan # LCCFC LL 1 - v2 and Plan # LCCFC BHH 1 - v2 (both plans contained at appendix 10 (*Project Sites*)) together with the Properties thereon and the service ducts and media for all utilities servicing such Properties;

**"New Build Works"** means the Works required to build the New Build Properties in accordance with the Output Specification;

**"New Build Works Completion Date"** means the date on which the final Certificate of Availability is issued in relation to the New Build Properties;

**"New Build Works Period"** means the period from the Commencement Date to the New Build Works Completion Date;

**"New Contract"** means an agreement on the same terms and conditions as this Agreement including any outstanding Contributions under clause 10.3 (*Capital Works Contributions*) as at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to any Planned Services Commencement Dates or achievement of any Milestones, then the relevant Planned Services Commencement Dates shall be extended by a period or the relevant Milestones shall be amended to allow a New Contractor to achieve:
  - (i) the relevant Services Commencement by such Planned Services Commencement Dates; or
  - (ii) the Milestones by the relevant Milestone Dates.
- (b) any accrued Deductions, Default Termination Points and/or warning notices shall, for the purposes of termination only, and without prejudice to the rights of the City Council 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"** means the person who has entered or who will enter into the New Contract with the City Council;

**"New Employees"** means those new employees employed by the Contractor to provide the Services who will be working alongside the Transferring Employees;

**"Notice Date"** means 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 43.3 (*No Retendering Procedure*);

**"Notifiable Financings"** means any Refinancing described in paragraph (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting the Contractor's or any 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 31.10 (*Maintenance Manual*);

**"Original Employee"** means those employees of the City Council who as a result of the application of TUPE, in relation to what was done for the purposes of carrying out the contract between the City Council and the First Contractor, became employees of someone other than the City Council;

**"Original Properties"** means the Properties as at the Services Commencement Date (including any Changes incorporated into the Works);

**"Original Senior Commitment"** means the amount of principal issued and outstanding in respect of the Bonds as at the Issue Date (as adjusted to take into account any Qualifying Variation);

**"Other Adjustments"** refers to any other adjustments to be made to the Monthly Unitary Charge on a monthly basis (if applicable) in accordance with Part 6 of the Payment Mechanism;

**"Output Specification"** means the output specification for the Works and Services as set out in schedule 2 (*Output Specification*);

**"Outstanding Principal"** means the principal amount outstanding at the Termination Date in respect of the Bonds under the Senior Financing Agreement and amounts drawn from the Additional Construction Reserve Account pursuant to the terms of the Collateral Deed;

**"Partial loss of Lifts in a block"** shall have the meaning given to that term in paragraphs 8.2 and 8.3, appendix 2, Annex 10 of Volume 1 of the Output Specification;

**"Past Service Reserve"** means the actuarial value, calculated on the basis that the provisions of Section 62 of the Pensions Act 1995 applies directly to the LGPS or Contractor Scheme ("**Transferring Scheme**"), of the aggregate of the benefits, whether immediate, prospective or contingent, payable under the Transferring Scheme to and in respect of each transferring member, his spouse and dependants, by reference to pensionable service in the Transferring Scheme, but making proper allowance for projected increases in the rate of pensionable salary of each transferring member from the cessation of pensionable service to the expected date of withdrawal, retirement or death and increases (whether or not pursuant to a legal obligation) in pensions in payment using demographic and actuarial assumptions which are overall no less conservative than those adopted for the most recent funding valuation of the Transferring Scheme;

**"Paying Agent"** means the paying agents identified in the Paying Agency Agreement;

**"Paying Agency Agreement"** has the meaning given to it in the Bond Trust Deed;

**"Payment Mechanism"** means schedule 5 (*Payment Mechanism*);

**"Payment Period"** means each month during the Contract Period;

[REDACTED]

**"Performance Deduction"** means the deduction for Month *t* determined pursuant to paragraph 4.2 of Part 4 of the Payment Mechanism;

**"Performance Factor"** has the meaning given to it in paragraph 4.3 of the Payment Mechanism;

**"Performance Ratchet Factor"** means the ratchet factor to be applied to each Key Performance Indicator Standard determined in accordance with paragraph 4.4 of the Payment Mechanism;

**"Performance Standards"** means the standards set out at Annex 6 to the Output Specification;

**"Performance Standard Benchmarking Exercise"** means the benchmarking exercise to be undertaken in relation to the Services in accordance with clause 35.4 (*Performance Standard Benchmarking*);

**"Periodic Survey"** means the surveys set out in paragraphs 3.3.7 to 3.3.10 of Volume 1 of the Output Specification;

**"Permanent Rectification"** means the measures to permanently Rectify an event of Unavailability;

**"Permanent Rectification Period"** means the period for a Permanent Rectification set out in appendix 4 of the Payment Mechanism;

**"Permitted Borrowing"** means without double counting, any:

- (a) advance to the Contractor, HoldCo or the Issuer under the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of clause 47.3.2.1 (*Changes to the Financing Agreements*)), provided that such advance is not made under any Committed Stand-by Facility;
- (b) Additional Permitted Borrowing;
- (c) advance to the Contractor, HoldCo or the Issuer under any Committed Stand-by 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 47.3.2.1 (*Changes to the Financing Agreements*)), 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"** means a breach for which a Final Warning Notice (referred to in clause 38.2 (*Final Notice*)) has been issued which has continued for more than 30 days or recurred in two (2) or more months within six (6) months after the date on which such Final Warning Notice is served on the Contractor;

**"Personal Data"** means personal data as defined in the DPA which is supplied to the Contractor by the City Council or obtained by the Contractor in the course of performing the Services;

**"PFI"** means the Government's Private Finance Initiative or any similar or replacement initiative;

**"PFI Contractor"** means a person who 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 60.1 (*Application of Insurance Proceeds*);

**"Planned Full Services Commencement Date (New Build)"** means, in respect of a New Build Property (and any associated New Build Works) the date shown as the Planned Full Services Commencement Date for such Property in the Construction Programme or such later date as may be allowed in accordance with this Agreement;

**"Planned Full Services Commencement Date (Refurbishment)"** means, in respect of a Refurbishment Property (and any associated Refurbishment Works) the date shown as the Planned Full Services Commencement Date for such Property in the Construction Programme or such later date as may be allowed in accordance with this Agreement;

**"Planned Maintenance"** means any maintenance, repairs, refurbishment or replacement to be carried out by the Contractor to comply with its obligations under clause 23.1 (*Maintenance*);

**"Planned Maintenance Programme"** means the programme of Planned Maintenance for Dwellings and/or Properties as contained in part 6 of schedule 3 (*Contractor's Proposals*) as may be varied from time to time in accordance with the Review Procedure;

**"Planned Services Commencement Date"** means any of the:

- (a) Planned Full Services Commencement Date (New Build);
- (b) Planned Full Services Commencement Date (Refurbishment); and/or
- (c) Initial Services Commencement Date (Refurbishment);

**"Planning Risks Schedule"** means schedule 29 (*Planning Risks*) of this Agreement;

**"Post Termination Service Amount"** means for the purposes of clause 43.2 (*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:

- (a) the Market Value Availability Deduction Amount for that month;
- (b) the Rectification Costs incurred by the City Council 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"** means two per cent above the base rate from time to time of National Westminster Bank plc;

**"Pre-Refinancing Equity IRR"** means 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 a Refinancing;

**"Principal Building Sub-Contractor"** means any Building Sub-Contractor appointed to undertake:

- (a) piling/ground compaction;
- (b) lifts;
- (c) structural steel;
- (d) M&E installer;
- (e) cladding;
- (f) roofing - structure (excluding roof trusses);
- (g) curtain walling; or
- (h) any part of the Works involving a substantial design element provided that, for the purpose of clause 4 (*Collateral Warranties*), the contract value of such Works is equal to or greater than £100,000 (indexed) in aggregate;

**"Priority Repair"** shall have the meaning given to it in appendix 4 of the Payment Mechanism and clarified in Annex 14 of Volume 1 of the Output Specification;

**"Private Finance Initiative or PFI"** means the Government's Private Finance Initiative or any similar or replacement initiative;

**"Professional Team"** means the architects, structural engineers, civil engineers, mechanical and electrical engineers and landscape architect to the extent that they are engaged by the Building Contractor in connection with the design of the Works;

**"Prohibited Act"** means:

- (a) offering, giving or agreeing to give to any servant of the City Council 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 City Council; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the City Council;
- (b) entering into this Agreement or any other agreement with the City Council 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 City Council; 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 City Council;
- (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 City Council;

**"Prohibited Employment Grounds"** means 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, 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"** means 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, 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"** means the demolition, construction and refurbishment and the management and maintenance of City Council owned dwellings and/or properties in the Little London and Beeston Hill & Holbeck areas of Leeds and the provision of certain housing management services, all pursuant to the Private Finance Initiative and the terms of the Agreement;

**"Project Accounts"** means the accounts referred to in and required to be established under the Senior Financing Agreements;

**"Project Data"** means:

- (a) all Design Data;
- (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the carrying out of the Works or the provision of the Services; and
- (c) any other materials, documents or data acquired brought into existence or used in relation to the Works, the Services or this Agreement;

**"Project Documents"** means the agreements entered into by the Contractor for the performance of its obligations under this Agreement which are listed in schedule 15 (*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 9 (*Liaison Procedure*);

**"Project Sites"** means the any or all of the New Build Sites, Demolition Sites, Refurbishment Sites and Environmental Works Area;

**"Property"** means a building comprising one or more of the Dwellings (together with any related Common Parts);

**"Property Type"** means each of the property types:

- (a) in the first column of the Newbuild Archetype (Property Types) sheet; and

- (b) in each of the columns headed "Archetype reference" in the Refurbishment Archetypes (Property Types) sheet,

as set out in appendix 10 to section 8, part 1 of schedule 3 (*Contractor's Proposals*);

**"Project Management Fee"** means a fee in respect of project management services calculated in accordance with paragraph 2.2 of Part 4 (High Value Changes) of the Change Protocol;

**"Proposed Leaseholder Works"** has the meaning given to it in clause 28.1.3.1 (*Leaseholders*);

**"Proposed Workforce"** has the meaning given to it in clause 29.4.4 (*Employment Costs*);

**"Public Safety Incident"** means an incident, which results in serious personal injury or death to any City Council Related Party, Tenant or Leaseholder caused by a negligent act or omission of the Contractor or any sub-contractor in the performance of the Works and/or Services;

**"Qualification Criteria"** means the criteria that the City Council requires tenderers to meet as part of the Tender Process which (subject to compliance with the procurement regulations) shall be:

- (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 City Council and the Contractor;

**"Qualifying Bank Transaction"** means:

- (a) the syndication by a Senior Funder, 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 Funder of any rights of participation, or the disposition by a Senior Funder 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 Funder;
  - (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 £10 million (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 years) at least 50 members and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);
  - (vi) an EEA or Swiss Insurance Undertaking;
  - (vii) a Regulated Collective Investment Scheme;
  - (viii) not used; or
  - (ix) any other institution in respect of which the prior written consent of the City Council has been given; or
- (c) the grant by a Senior Funder 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 Funder;
  - (ii) any institution specified in paragraphs (b)(ii) to (vii) above;
  - (iii) not used; or
  - (iv) any other institution in respect of which the prior written consent of the City Council has been given; or
- (d) any transfer by Assured Guaranty of its rights or obligations under the Financial Guarantees and/or the Reimbursement and Indemnity Agreement to an Affiliate (as each is defined in the Senior Financing Agreements), provided that such transfer complies with the terms of the Financial Guarantees and/or the Reimbursement and Indemnity Agreement (as each is defined in the Senior Financing Agreements);

**"Qualifying Change in Law"** means:

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law;
- (c) a General Change in Law which comes into effect during the Service Period and which involves Capital Expenditure (other than such as shall apply to the Works),

which was not foreseeable at the date of this Agreement;

**"Qualifying Costs"** means, subject to paragraph 2 of the Tenant and Third Party Damage Protocol, any direct costs resulting from Tenant Damage or Third Party Damage (as relevant);

**"Qualifying Refinancing"** means 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 Services in respect of which either an City Council Change Notice or a Contractor Change Notice has been served and, in the case of:
  - (i) a City Council Change Notice, the City Council has confirmed the estimated Capital Expenditure and, where the Contractor is not funding all or part of the required Capital Expenditure, the City Council 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 City Council; 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 to the Services have become unconditional in all respects;

**"Ratchet Factor"** means the ratchet factor determined in accordance with paragraph 3.13 of the Payment Mechanism in respect of Unavailability Deductions;

**"Recipient"** has the meaning given to it in clause 33.11 (*VAT on Payments*);

**"Recoverable Leaseholder Costs"** has the meaning given to it in clause 28.1.4.2 (*Leaseholders*) but shall exclude any amounts recoverable from Leaseholders as management fees or in respect of insuring Leasehold Dwellings;

**"Rectification"** means the measures carried out by the Contractor to remedy an event of Unavailability such that the relevant Availability Standards are achieved and **"Rectify"** shall be construed accordingly;

**"Rectification Category"** means that category of repair as laid out in appendix 4 of the Payment Mechanism;

**"Rectification Costs"** means 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 City Council in a particular month or part of a month in ensuring that the Services are available;

**"Rectification Period"** means a Temporary Rectification Period or Permanent Rectification Period as appropriate;

**"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 9.3 of Part 4 (High Value Changes) of the Change Protocol;

**"Refinancing"** means:

- (a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement);

- (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreement);
- (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 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 or the Issuer whether by way of security or otherwise; or
- (d) any other arrangement put in place by the Contractor, the Issuer 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 the Issuer's ability to carry out any of a) to c) above;

**"Refinancing Gain"** means 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;

**"Refinancing Notice"** has the meaning given to it in clause 81.9.1 (*City Council Right to request Refinancing*);

**"Refurbishment Certification Standard"** means the standard for certification of Refurbishment Properties set out in Annex 9 (*Certification Standard (Refurbishment)*) to the Output Specification;

**"Refurbishment Dwelling"** means the flats or houses listed by address in part 1a of appendix 2 (but excluding any Dwelling in respect of which the freehold interest in that Dwelling has been disposed of) and shall include any Conversion Dwellings (save in respect of compliance with the Output Specification where reference to Refurbishment Dwellings shall exclude Conversion Dwellings);

**"Refurbishment Milestone"** means for a particular Milestone Date the number of Refurbishment Dwellings listed in column 1 of part 2 of schedule 19 (*Milestones*);

**"Refurbishment Properties"** means the buildings comprising one or more Refurbishment Dwellings (together with any related Common Parts) which are required to be refurbished pursuant to this Agreement and which are more particularly set out in Annex 6 to Section 1 and Annex 6 to Section 2 of Volume 2 of the Output Specification and **"Refurbishment Property"** shall be construed accordingly;

**"Refurbishment Sites"** means the properties marked in green, red or yellow on Plan # LCCFC BHH 2 - v3 and the properties marked in green or red on Plan # LCCFC LL 2 - v2 (both plans contained at appendix 10 (*Project Sites*)) together with the curtilage of such properties and the service ducts and media for all utilities serving such properties;

**"Refurbishment Works"** means those parts of the Works undertaken prior to the issue of a Certificate of Availability (Full Standard) in relation to a Refurbishment Dwelling;

**"Refurbishment Works Completion Date"** means the date on which the final Certificate of Availability is issued in relation to the Refurbishment Properties;

**"Refurbishment Works Period"** means the period from the Commencement Date to the date upon which the final Certificate of Availability for the final Dwelling in a Refurbishment Property is issued disregarding those Dwellings where a Certificate of Availability has not been issued as a consequence of a Works or Services Denial Event;

**"Registered Social Landlord"** means 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"** means 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 to be carried out and there is "No Access" for the purposes of the Decant Protocol and Access Protocol;

**"Reinstatement Plan"** has the meaning given to it in clause 60.3 (*Obligations*);

**"Reinstatement Works"** has the meaning given to it in clause 60.3 (*Obligations*);

**"Relevant Assumptions"** means the assumptions that the sale of the Contractor is on the basis, that there is no default by the City Council, 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"** means 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"** means the employees who are the subject of a Relevant Transfer;

**"Relevant Event"** means 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 16 (*Extensions of Time*), 27 (*Market Testing*), 34 (*Indexation*), 35 (*Best Value*), 52 (*Change in Law*) and the Change Protocol;

**"Relevant Incident"** has the meaning given to it in clause 60.3 (*Obligations*);

**"Relevant Person"** means a Shareholder and any of its Affiliates;

**"Relevant Proceeds"** means any amounts standing to the credit of the Joint Insurance Account;

**"Relevant Service Transfer"** means the transfer on one or more dates agreed by the parties (each a **"Relevant Service Transfer Date"**) to the contractor of responsibility for the



provision of (or procuring the provision by a Sub-Contractor) of the Services in accordance with this Agreement;

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

**"Relevant Transfer Date"** means the date on which an Eligible Employee transfers to the Contractor and/or one or more Sub-Contractor by virtue of a Relevant Transfer;

**"Relief Event"** means 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 Sites or any roads servicing them;
- (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 dispute,generally affecting the construction, housing or housing management industry or a significant sector of it;
- (g) the occurrence of a Works or Services Denial Event;

■ [REDACTED]

■ [REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

**"Remuneration Costs"** has the meaning given to it in clause 29.4.4.2 (*Employment Costs*);

**"Rented Dwellings"** means all Dwellings other than Leasehold Dwellings;

**"Reorganisation Costs"** has the meaning given to it in clause 29.4.4.3 (*Employment Costs*);

**"Reporting Deduction"** means fifty pounds (£50) (Indexed);

**"Reporting Failure"** shall have the meaning given to it by Part 5, paragraph (a) of the Payment Mechanism;

**"Requests for Information"** shall have 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"** means the insurances specified in schedule 12 (*Insurances*);

**"Required Standard"** has the meaning given to it in clause 41.4 (*Results of Survey*);

**"Responsive Repairs"** means the responsive repairs service to be carried out by the Contractor to satisfy the Output Specification;

**"Responsive Repairs and Cyclical Maintenance and Renewal Contract"** means 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"** means Frank Haslam Milan & Company Limited (company registered number 00629404) of Keepmoat Ltd The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire, DN4 5PL or such other responsive repairs and cyclical maintenance and renewal contractor or the Contractor may, subject to clause 4 (*Collateral Warranties*), clause 7 (*Documents and Co-operation*) and clause 28.2 (*Management Agreements*), appoint to provide the Services;

**"Responsive Repairs and Cyclical Maintenance and Renewal Contract Dispute"** has the meaning given to it in clause 62.14 (*Similar Disputes*);

**"Restricted Share Transfer"** means the transfer of shares or any interest in shares of the Contractor, the Issuer or HoldCo to any Unsuitable Third Party;

**"Retendering Information"** has the meaning given to it in clause 29.15 (*Retendering*);

**"Retention Fund Account"** has the meaning given to it in clause 41.5 (*Retention Fund*);

**"Return Date"** has the meaning given to it in clause 29.16.2 (*Termination of Agreement*);

**"Returning Employees"** has the meaning given to it in clause 29.16.2 (*Termination of Agreement*);

**"Reviewable Design Data"** means the plans, drawings, documents and information relating to the Works listed in appendix 1 to schedule 7 (*Review Procedure*);

**"Reviewable Design Data Programme"** means the Contractor's programme for the submission of Reviewable Design Data in accordance with schedule 7 (*Review Procedure*) as set out in appendix 2 to schedule 7 (*Review Procedure*);

**"Review Date"** means the first and each subsequent anniversary of the Commencement Date;

**"Review Procedure"** means the procedure set out in schedule 7 (*Review Procedure*);

**"Revised Senior Debt Termination Amount"** subject to clause 47.3 (*Changes to the Financing Agreements*):

- (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, and which are payable by the Contractor, HoldCo or the Issuer under the Senior Financing Agreements in respect of Permitted Borrowing; and
- (b) all amounts including the costs of early termination of the Guaranteed Investment Contract(s) and any Make-Whole Payment payable by the Contractor, HoldCo or the Issuer (or if the prepayment referred to below has not occurred by the Calculation Date, such Make-Whole Payment and other amounts that would have become payable if such prepayment occurred on the Calculation Date) payable by the Contractor, HoldCo or the Issuer to the Senior Funders as a result of prepayment in respect of Permitted Borrowing and/or, in the case of early termination of the Guaranteed Investment Contractor(s), only, as a result of termination of this Agreement, subject to the Contractor, HoldCo, the Issuer and the Senior Funders

mitigating all such costs to the extent reasonably possible (unless and to the extent the amount, or the formula for determining the amount, of such costs is fixed in advance under the terms of the Senior Financing Agreements),

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 and the Distributions Account) held by or on behalf of the Contractor, HoldCo or the Issuer 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 the Guaranteed Investment Contract(s) and other breakage costs, payable by the Senior Funders to the Contractor, HoldCo or the Issuer as a result of prepayment of amounts outstanding in respect of Permitted Borrowing, or, in the case of early termination of the Guaranteed Investment Contract(s) only, as a result of termination of this Agreement;
- (iv) all other amounts (except insurance proceeds in respect of third party liabilities and other insurance proceeds to which the Contractor, HoldCo or the Issuer is not beneficially entitled) received by the Senior Funders on or after the Termination Date and before the date on which any compensation is payable by the City Council to the Contractor as a result of enforcing any other rights they may have; and
- (v) all APB Distributions;

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

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

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

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

**"RLO"** or **"Residents Liaison Officer"** means an officer of the Contractor who shall liaise with the Tenants and carry out the functions ascribed to them in the protocols set out at appendix 1 (*City Council's Protocols*) and Contractors Proposals and who is suitably qualified to carry out that role;

**"RPIX"** means 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 62 (*Dispute Resolution*);

**"RRO"** means the Regulatory Reform (Housing Management Agreements) Order 2003;

**"Sanitary Facilities"** shall have the meaning given to that term in paragraphs 5.4 to 6.4, Appendix 2, annex 10 of Volume 1 of the Output Specification;

**"schedule"** means a schedule to this Agreement;

**"Section 27"** means 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 28.2 (*Management Agreements*);

**"Security Trustee"** means BNY Mellon Corporate Trustee Services Limited, a company, incorporated with registered number 02631386 under the laws of England and Wales and having its registered office at 1 Canada Square, London E14 5AL which expression will, where the context so admits, include all persons for the time being the trustee or trustees under the Security Trust and Intercreditor Deed (as defined herein));

**"Security Trust and Intercreditor Deed"** means the security trust and intercreditor deed made on or about the date of this Agreement between, inter alios, the Contractor, Holdco, the Issuer, AGM, AGE and the Security Trustee;

**"Semi-Variable Costs"** means for the purpose of clause 22.1 (*Commencement and Duration of the Services*), 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 shown in the CNDT model;

**"Senior Debt"** means the financing provided by the Senior Funders under the Senior Financing Agreements;

**"Senior Debt Rate"** means the non-default interest rate as defined in the Senior Financing Agreements or such lower rate as the parties may agree;

**"Senior Finance Agreement Financial Model"** means the Financial Model (as defined in the Collateral Deed) as the same may be updated from time to time in accordance with the provisions of the Collateral Deed (provided always that such model shall continue on the same basis after the Senior Debt has been repaid until the end of the Contract Period);

**"Senior Financing Agreements"** means those of the Financing Agreements listed in part 1 of schedule 14 (*Initial Financing Agreements*) as at the date of this Agreement or without prejudice to clause 47.3.2 (*Changes to the Financing Agreements*), as the same may be amended as allowed by clause 47.3.1 (*Changes to Financing Agreements*);

**"Senior Funders"** means each of Assured Guaranty, the Security Trustee, the Paying Agent, the Bond Trustee and each other person providing finance to the Contractor under the Senior Financing Agreements;

**"Service Delivery Plan"** means the plan for the delivery of the Services as contained in part 2 of schedule 3 (*Contractor's Proposals*) as may be varied from time to time in accordance with the Review Procedure;

**"Service Performance Failure"** means a failure of the Contractor to provide a service in accordance with any of the Key Performance Indicator Standards;

**"Service Period"** means the period specified in clause 3.2 (*Commencement and Duration*);

**"Service Transfer Date"** means the transfer on a date agreed by the parties to this Agreement of responsibility for provision of (or procuring the provision by Sub-Contractors of) the Services in accordance with this Agreement;

**"Service Users"** means those users who consume or benefit from the Services, including, but not limited to, Tenants and Leaseholders;

**"Services"** means the services required to be provided by the Contractor pursuant to this Agreement to satisfy the Output Specification (other than in respect of the Works);

**"Services Commencement"** means the commencement of the Services;

**"Services Commencement Date"** means in respect of the Refurbishment Properties and Environmental Works Areas, the Initial Services Commencement Date (Refurbishment), and in all other cases the date of issue of the Certificate of Availability in respect of the relevant Property or Demolition Works;

**"Services Media"** means 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"** has the meaning given in clause 22.1.2 (*Commencement and Duration of the Services*);

**"Shareholder"** means any person from time to time holding share capital in the Contractor, the Issuer or the Holding Company of either the Contractor or the Issuer;

**"Sheltered Accommodation"** means those Dwellings marked as Sheltered in Annex 6 of Section 1 and marked as Sheltered Conversions in Annex 5 of Section 2 of Volume 2 of the Output Specification together with the Communal Areas and curtilage;

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

**"Site Foreman"** means a representative of the Contractor in a supervisory capacity;

**"Small Works Rates"** means the hourly rates for specified categories of labour set out in the Catalogue;

**"Snagging Items"** means minor defects, deficiencies or omissions of a snagging nature which need to be rectified by the Contractor which both individually and in aggregate are sufficiently insignificant so as not to prevent or interfere with the beneficial use of the Dwelling or Property as set out in the Snagging List;

**"Snagging List"** means the list to be prepared by the Independent Certifier in accordance with clause 20.4.1 (*Snagging Items*) containing particulars of Snagging Items;

**"Snagging Programme"** has the meaning given to it in clause 20.4.1 (*Snagging Items*);

**"Specific Change in Law"** means any Change of Law which specifically refers to:

- (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;

**"Stakeholder"** means the Tenants, Leaseholders, other local residents, elected members, community groups, local and City Council service providers and other local organisations and companies;

**"Start on Site Date"** means the relevant date set out in column 2 of the tables contained in schedule 30 (*Licences*);

**"Statutory CNDT"** means 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 City Council elects to treat such as an City Council Change in accordance with clause 28.8 (*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"** means the stock condition survey of the Dwellings and/or Properties carried out by the Stock Condition Surveyor in accordance with the Stock Condition Surveyor's Appointment;

**"Stock Condition Surveyor"** means Michael Dyson Associates Ltd of West House, Meltham Road, Honley, Holmfirth, West Yorkshire, HD9 6LB;

**"Stock Condition Surveyor's Appointment"** means the appointment dated 11 January 2011 between (1) Community Solutions for Regeneration of 10 Furnival Street, London, EC4A 1AB, and (2) Regenter Limited of Bow House, Servia Hill, Leeds, LS6 2QH, and (3)



Frank Haslam Milan Limited of Balby Court, Carr Hill, Doncaster, DN4 8DE and (4) the City Council and (5) the Stock Condition Surveyor pursuant to which Stock Condition Surveyor carried out the Stock Condition Survey;

**"Stopping Up Orders"** means an order to stop up or divert:

- (a) a highway pursuant to section 247 of the Town and Country Planning Act 1990; or
- (b) a footpath or bridleway pursuant to section 257 of the Town and Country Planning Act 1990;

**"Stopping-Up Judicial Proceedings"** means any form of judicial proceedings or legal challenge in relation to a Stopping Up Order including any application or appeal to the court or any other tribunal, duly authorised party or other appropriate forum whatever against or in respect of any decision action or omission of the local planning authority, the Secretary of State for the time being discharging the functions of the Secretary of State for the purposes of the Town and Country Planning Act 1990 (including an inspector appointed by such Secretary of State acting on his behalf), the court or any other tribunal person or forum, in each case relating to the Stopping-Up Orders detailed to in columns 1 to 5 of part 1 of Schedule 29 (*Planning Risks*);

**"Structural Survey Appointment"** means the appointment between the City Council and the Structural Surveyor to carry out and complete the structural surveys dated 2 November 2007 for Carlton Garth, Carlton Close, Carlton Croft, Oatland Towers, Oatland Heights and Oatland Court;

**"Structural Surveyor"** means the structural surveyor appointed by the City Council to carry out and complete the structural surveys pursuant to the Structural Survey Appointment;

**"Sub-Agreement"** means has the meaning given to it in clause 28.2 (*Management Agreements*);

**"Sub-Contractors"** 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"** means the contracts entered into between the Contractor and the Sub-Contractors in relation to the Project;

**"Sub-Contractor Breakage Costs"** means 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:

- (a) the Losses are incurred in connection with the Project and in respect of the provision of services or completion of works, including:
  - (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;
- (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 to [REDACTED] of the Building Contractor, and [REDACTED]; and
- (c) the Contractor and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses;

**"Submitted Item"** has the meaning given to it in paragraph 1.2 of schedule 7 (*Review Procedure*);

**"Submitted Item Tracking Sheet"** has the meaning given to it in paragraph 1.2. of schedule 7 (*Review Procedure*);

**"Subordinated Financing Agreements"** means those of the Financing Agreements listed in part 2 of schedule 14 (*Initial Financing Agreements*) or as amended with the prior written approval of the City Council;

[REDACTED]

**"Subsidiary"** has the meaning given in Section 1159 of the Companies Act 2006, save that for the purposes of determining whether one entity is a Subsidiary of another any transfer of shares by way of security or to a nominee shall be disregarded;

**"Successful Tenderer"** means a sub-contractor appointed by the Contractor pursuant to clause 27.3 (*Market Testing Procedure*);

**"Suitable Substitute Contractor"** a person approved by the City Council (such approval not to be unreasonably withheld or delayed) as:

- (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;

**"Suitable Third Party"** means any person who is not an Unsuitable Third Party;

**"Supplier"** has the meaning given to it in clause 33.11.2 (*VAT on Payments*);

**"Surveys"** means all surveys, including but not limited to the Stock Condition Survey(s), the Asbestos Survey(s) and the Site Condition survey(s) of the Dwellings and/or Properties and/or Project Sites carried out by the Surveyors in accordance with their appointments;

**"Surveyors"** means the Stock Condition Surveyor, the Asbestos Surveyor and any other surveyor carrying out a Survey pursuant to the terms of a Survey Appointment;

**"Survey Appointment"** means the Stock Condition Surveyor's Appointment, the Asbestos Surveyor's Appointment and the appointment dated 11 January 2011 between (1) Community Solutions for Regeneration of 10 Furnival Street, London, EC4A 1AB and (2) Regenter Limited of Bow House, Servia Hill, Leeds, LS6 2QH and (3) Frank Haslam Milan Limited of Balby Court, Carr Hill, Doncaster, DN4 8DE and (4) the City Council and (5) White Young Green Environmental Limited of Arndale Court, Arndale Centre, Leeds LS6 2UJ pursuant to which the Site Condition surveys were carried out;

**"Tax"** means 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;

**"Technical Adviser"** means any adviser appointed by the Senior Funders for the purposes of providing technical support or reports;

**"Temporary Alternative Accommodation"** shall have the meaning given to that term in Annex 13 of Volume 1 of the Output Specification;

**"Temporary Rectification"** means, where permitted by Annex 12 of Volume 1 of the Output Specification, temporary rectification measures carried out by the Contractor to Rectify the Unavailability on a temporary basis and **"Temporarily Rectified"** shall be construed accordingly;

**"Temporary Rectification Period"** means the period for a Temporary Rectification set out in appendix 4 of the Payment Mechanism;

**"Tenancy Agreement"** means any tenancy agreement (whether in writing or otherwise) between the City Council and a tenant of a Rented Dwelling;

**"Tenant"** means the person who from time to time is a tenant, licensee or other lawful occupier of a Dwelling other than a Leaseholder;

**"Tenant and Leaseholder Enforcement Policy"** means the policy applying to the enforcement of Tenancy Agreements and Leaseholder's Leases as contained in schedule 13 (*City Council's Policies*);

**"Tenant and Third Party Damage Protocol"** means the protocol contained in appendix 1G;

**"Tenant Damage"** means any damage wilfully, intentionally or negligently caused to a Dwelling or Common Parts by a Tenant (or Leaseholder, as the case may be) 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 by the Contractor to comply with the Contractor's obligations under this Agreement;

**"Tenant's Improvement"** means 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 Improvements Protocol"** means the protocol set out at appendix 1C;

**"Tenant Waiver"** means a waiver provided by a Tenant in accordance with the Tenant Waiver Protocol and as defined in paragraph 2.1 of such protocol;

"**Tenant Waiver Event**" has the meaning given to it in paragraph 3.3 of the Tenant Waiver Protocol;

"**Tenant Waiver Protocol**" means the protocol contained in appendix 1B;

"**Tender Costs**" means the reasonable and proper costs of the City Council 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 27.3.1 (*Market Testing Procedure*);

"**Tender Process**" means the process by which the City Council 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 43.2.5 (*Retendering Procedure*);

"**Tender Process Monitor**" means a third party appointed by the Contractor under clause 43.2.5;

"**Tendering Report**" means a report prepared by the Contractor which shall include the information required by paragraph 7.5 of Part 4 (High Value Changes) of the Change Protocol;

"**Termination Date**" means the date of early termination of this Agreement in accordance with its terms;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**"Termination Notice"** means a notice of termination issued in accordance with this Agreement;

**"Termination Sum"** means any compensation payable by the City Council to the Contractor on an early termination of this Agreement under clauses 42 (*Compensation on Termination for Force Majeure*), 43 (*Compensation on Termination for Contractor Default*), 44 (*Compensation on Termination for City Council Default/Voluntary Termination*) and 45 (*Compensation on Corrupt Gifts, Fraud and Refinancing Breaches*) (excluding the Adjusted Highest Compliant Tender Price);

**"Third Party Damage"** means any damage caused to a Dwelling, Property or any element of a Project Site by a Tenant or third party save to the extent such damage constitutes Tenant Damage.

[REDACTED]

**"Total loss of Lifts in a block"** shall have the meaning given to that term in paragraph 8.2 to 8.3, appendix 2, Annex 10 of the Output Specification;

**"Town and Village Green Application"** means an application made by a third party to register part of one or more of the TVG Sites as a Town and Village Green under section 15 of the Commons Act 2006 made on or before 11 July 2011;

**"TPL Risk"** means a risk which is required to be insured under the third party liability insurance policy;

**"Transfer and Mutual Exchanges"** means any Transfer of Dwellings or Mutual Exchange of Dwellings;

**"Transfer Date"** means the date the Transferring Employees are transferred to the employment of the Contractor and the date that the Transferring Original Employees are transferred to the employment of a subsequent contractor;

**"Transfer of Dwellings"** means where a Tenant with the agreement of the City Council transfers their tenancy to another property within the City Council's area;

**"Transfer Value"** means the actuarial value of the benefits of each member of the LGPS or Contractor Scheme (on a secondary transfer of employees), as the case may be, who elects to transfer their benefits pursuant to the terms of this Agreement calculated on a Past Service Reserve basis and without any reduction having been applied to reflect any deficiencies in the assets relative to the liabilities of the LGPS or Contractor Scheme;

**"Transferring Employee"** an employee of the City Council or an ALMO whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Agreement between the City Council and the Contractor, a contract of employment with someone other than the City Council or such ALMO;

**"Transferring Original Employee"** means an Original Employee whose contract of employment:

- (a) becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out a contract between the City Council and the Contractor, a contract of employment with someone other than his existing employer; and
- (b) on each occasion when an Intervening Contract was carried out became, by virtue of the application of TUPE in relation to what was done for the purposes of carrying out the Intervening Contract, a contract of employment with someone other than his existing employer;

**"Transitional Japanese Knotweed Site"** has the meaning given to it in clause 6.9.4;

**"Transitional Regulations"** means the Local Government Pension Scheme (Transitional Provisions) Regulations 2008;

**"Tree Maintenance"** means the maintenance works set out in Section 3.5.12 to 3.5.16 (inclusive) of Volume 1 of the Output Specification;

**"Trees Protocol"** means the protocol set out in appendix 11;

**"TUPE"** means 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;

**"TVG Sites"** means those sites shaded green within the red line boundary on Plan # LCCFC LL10 - v2 and Plan # LCCFC BHH10 - v2 (both plans contained at appendix 10 (*Project*

Sites)) and "TVG Site" shall be the particular area within Carlton Gate or Fairfax sites as appropriate;

**"Unavailable"** means a Rented Dwelling, Leasehold Dwelling or Facility that is not Available and **Unavailability** shall be construed accordingly;

**"Unavailable But Used"** means that at any time in relation to an Unavailable Rented Dwelling or Leasehold Dwelling that such Rented Dwelling or Leasehold Dwelling is occupied or used by the Tenant or Leaseholder or any other person lawfully entitled to reside in that Rented Dwelling or Leasehold Dwelling pursuant to a Tenancy Agreement or Leaseholder's Lease;

**"Unavailability Deduction (UD<sub>t</sub>)"** means the deduction for Month t calculated in accordance with paragraph 3.9 of the Payment Mechanism;

**"Uninsurable"** means in relation to a risk, either that:

- (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;

**"Uninsured Losses"** means losses arising from any risks against which the Contractor or any Contractor Related Party does not maintain insurance (where not required to maintain insurance for such risk under this Agreement or by law), provided that:

- (a) the amount of any losses that would otherwise be recoverable under any Required Insurance but for the applicable uninsured deductible in respect of such insurance; and
- (b) any exclusion of loss of insurance proceeds caused by or contributed to by any act or omissions of the Contractor or any Contractor Related Party,

shall not be treated as an Uninsured Loss.

**"Unitary Charge"** means the payment calculated in accordance with schedule 5 (*Payment Mechanism*);



**"Unsuitable Third Party"** either:

- (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 City Council, incompatible with the provision of having Services by the City Council; or
- (c) any person whose activities, in the reasonable opinion of the City Council, pose or could pose a threat to national security;

**"Variable Costs"** means for the purposes of clause 28.6 (*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 the CNDT model;

**"VAT"** means value added taxes;

**"Void"** means (in relation to a Rented Dwelling) when the former tenancy of that Dwelling is terminated or has expired;

**"Void Period"** means the period during which the Contractor is to carry out void repair works to a void in accordance with Annex 18 Volume 1 of the Output Specification;

**"Voluntary CNDT"** means a change to the number of Rented Dwellings or Leasehold Dwellings in the Project as a consequence of the City Council 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;

**"Waste Management, Refuse and Recycling Facilities"** refer to those facilities to be provided by the Contractor in accordance with paragraphs 2.4 to 2.6, appendix 2, Annex 10 of Volume 1 of the Output Specification;

**"Weighting Factor"** means that factor applied to each Key Performance Indicator Standard contained within appendix 2 of the Payment Mechanism;

**"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);

**"Working Day"** means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the city of London;

**"Works"** means all of the works (including design and works necessary for obtaining access to the Project Sites, Dwellings or Properties) to be undertaken in accordance with this Agreement to satisfy the Output Specification;

**"Works Completion Certificate"** means a certificate, the form of which is designed by the City Council and agreed with the Contractor, to be signed by the Contractor and served on the City Council and relevant Tenant(s) and Leaseholder(s) following Rectification of any Unavailability at a Rented Dwelling, Leasehold Dwelling or Facility;

**"Works Completion Date"** means the date which is the later to occur of:

- (a) the New Build Works Completion Date; and
- (b) the Refurbishment Works Completion Date;

**"Works Delivery Plans"** means 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 or Services Denial Event"** means any of:

- (a) Access Refusal Event;
- (b) Rehousing Refusal Event;
- (c) Tenant Waiver Event;
- (d) a failure by the City Council to Decant a Dwelling in accordance with paragraph 6.4 of the Decant Protocol;
- (e) 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 Agreement; or
- (f) any other circumstances which may, in the discretion of the City Council, be agreed with the Contractor;

**"Works Period"** means the Refurbishment Works Period and/or the New Build Works Period (as the case may be); and

**"Year"** means 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).

## **SCHEDULE 2**

### **Output Specification**

## **SCHEDULE 3**

### **Contractor's Proposals**

**Part 1 - Contractor's Works Delivery Plan and Contractor's Contractual Method  
Statement for the Works**

**Part 2 - Contractor's Service Delivery Plan and Contractor's Contractual Method  
Statements for the Services**

**Part 3 - Construction Programme**

**Part 4 - Cyclical Maintenance and Replacement Programme**

**Part 5 - Design and Construction Plan**

**Part 6 - Planned Maintenance Programme**

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

## **SCHEDULE 5**

### **Payment Mechanism**

<b>Part 1:</b>	<b>Definitions</b>
<b>Part 2:</b>	<b>The Unitary Charge</b>
<b>Part 3:</b>	<b>Unavailability Deduction</b>
<b>Part 4:</b>	<b>Performance Deduction</b>
<b>Part 5:</b>	<b>Reporting Deductions</b>
<b>Part 6:</b>	<b>Other Adjustments</b>
<b>Part 7:</b>	<b>Limitations on Deductions</b>
<b>Part 8:</b>	<b>Monitoring and Reporting</b>
<b>Part 9:</b>	<b>Change Protocol Deductions</b>
<b>Appendix 1:</b>	<b>Availability Standards</b>
<b>Appendix 2:</b>	<b>Key Performance Indicators or “KPI”</b>
<b>Appendix 2a:</b>	<b>Required Records, Reports and Plans</b>
<b>Appendix 3:</b>	<b>Facility Charges</b>
<b>Appendix 4:</b>	<b>Rectification Periods</b>
<b>Appendix 5:</b>	<b>Monthly Monitoring Reports</b>
<b>Appendix 6:</b>	<b>Maximum Monthly Certification Cap</b>
<b>Appendix 7:</b>	<b>Environmental Works</b>
<b>Appendix 8</b>	<b>Communal Works</b>

## **PART 1: DEFINITIONS**

In this Schedule, unless the context otherwise requires, all words and expressions shall have the meanings assigned within Schedule 1 (Definitions) of this Agreement.

For the avoidance of doubt, all capital contributions are to be paid in accordance with clause 10.3 (Capital Works Contributions) of the Project Agreement.



## **PART 2: THE UNITARY CHARGE**

### **2.1 The Monthly Unitary Payment**

The Monthly Unitary Payment for each Month (Month t) occurring from the Initial Services Commencement Date (Refurbishment) up to and including the Contract Month in which the earlier of the Expiry Date or the Termination Date occurs shall be calculated using the following formula:

Where:

$$MUP_t = [MUC_t] - [UD_{t-2} + PD_{t-2} + RD_{t-2}] + /- [OA_{t-2}] + [CNDT_t]$$

- (a)  $MUP_t$  = the Monthly Unitary Payment for Month t;
- (b)  $MUC_t$  = the Monthly Unitary Charge for Month t;
- (c)  $UD_{t-2}$  = the Unavailability Deduction for Month t-2;
- (d)  $PD_{t-2}$  = the Performance Deduction for Month t-2;
- (e)  $RD_{t-2}$  = the Reporting Deduction for Month t-2
- (f)  $OA_{t-2}$  = the Other Adjustments for Month t-2; and
- (g)  $CNDT_t$  = the CNDT Compensation (if any) payable in Month t.

### **2.2 Deductions Upon Expiry and Termination**

In respect of any Deductions or Other Adjustments arising before the Expiry Date or the Termination Date (as the case may be), which the City Council has not deducted or adjusted from the Monthly Unitary Charge under paragraph 2.1 at such date, the Contractor shall pay to the City Council as a single lump sum the aggregate amount of all such Deductions or as the case may be of all the Other Adjustments within twenty (20) days of the Expiry Date or the Termination Date (as the case may be).

### **2.3 The Monthly Unitary Charge**

The Monthly Unitary Charge for each Month (Month t) shall be calculated as follows:

$$MUC_t = ISF_t + FSF_t$$

Where:

- (a)  $MUC_t$  is the Monthly Unitary Charge for Month t;
- (b)  $ISF_t$  is the Interim Services Fee for Month t; and
- (c)  $FSF_t$  is the Full Services Fee for Month t.

### **2.4 The Interim Services Fee**

The Interim Services Fee for each Month (Month t) shall be calculated as follows:

$$ISF_t = \sum_{\substack{n \\ \text{Rented} \\ \text{Dwelling}}} \left[ IARDC_y \times \frac{D_t}{M_y} \right] + \sum_{\substack{n \\ \text{Leasehold} \\ \text{Dwelling}}} \left[ IALDC_y \times \frac{D_t}{M_y} \right]$$

Where:

- (a) ISF<sub>t</sub> is the Interim Services Fee;
- (b) IARDC<sub>y</sub> is the Interim Annual Rented Dwelling Charge;
- (c) IALDC<sub>y</sub> is the Interim Annual Leasehold Dwelling Charge;
- (d) D<sub>t</sub> is, the number of days in Month t.
- (e) M<sub>y</sub> is the number of days in the calendar year in which Month t occurs;
- (f) n is each Rented Dwelling or Leasehold Dwelling (as relevant) in respect of which the Full Services Commencement Date has not occurred (including any Excess Rented and Leasehold Dwellings in respect of which a Full Annual Rented and Leasehold Dwelling Commencement Notice has not been served prior to the first day of Month t); and
- (g) ∑ signifies the summation of all Rented Dwellings or Leasehold Dwellings (as relevant) in respect of which the Full Services Commencement Date has not occurred prior to the first day of Month t (including any Excess Rented and Leaseholder Dwellings in respect of which a Full Annual Rented and Leasehold Dwelling Commencement Notice has not been served prior to the first day of Month t).

## 2.5 The Full Services Fee

The Full Services Fee for each Month (Month t) shall be calculated as follows:

$$FSF_t = \sum_{\substack{n \\ \text{Rented} \\ \text{Dwelling}}} \left[ FARDC_y \times \frac{D_t}{M_y} \right] + \sum_{\substack{n \\ \text{Leasehold} \\ \text{Dwelling}}} \left[ FALDC_y \times \frac{D_t}{M_y} \right]$$

Where:

- (a) FSF<sub>t</sub> is the Full Services Fee;
- (b) FARDC<sub>y</sub> is the Full Annual Rented Dwelling Charge;
- (c) FALDC<sub>y</sub> is the Full Annual Leasehold Dwelling Charge;
- (d) D<sub>t</sub> is, the number of days in Month t;
- (e) M<sub>y</sub> is the number of days in the calendar year in which Month t occurs;
- (f) n is each Rented Dwelling or Leasehold Dwelling (as relevant) in respect of which the Full Services Commencement Date has or has been deemed to have occurred in accordance with Clause 20.6 of this Agreement prior to the first day of Month t (including any Excess Rented and Leasehold Dwellings in respect of which a Full Annual

Rented and Leasehold Dwelling Commencement Notice has been served prior to the first day of Month t) ; and

- (g)  $\Sigma$  signifies the summation of the Rented Dwellings or Leasehold Dwellings (as relevant) in respect of which the Full Services Commencement Date has or has been deemed to have occurred in accordance with Clause 20.6 of this Agreement prior to the first day of Month t (including any Excess Rented Dwellings and Leasehold Dwellings in respect of which a Full Annual Rented and Leasehold Dwelling Commencement Notice has been served prior to the first day of Month t).

Provided that, notwithstanding the foregoing:

- (i) The City Council shall only be liable to pay to the Contractor the Full Annual Rented Dwelling Charge and/or a Full Annual Leasehold Dwelling Charge each Month (Month t) pursuant to this paragraph 2.5 for those Rented Dwellings and/or Leasehold Dwellings in respect of which the Full Services Commencement Date has or has been deemed to have occurred in accordance with Clause 20.6 of this Agreement prior to the first day of Month t to the extent that doing so does not exceed the Maximum Monthly Certification Cap;
- (ii) for the avoidance of doubt, any Rented Dwellings and/or Leasehold Dwellings in respect of which the Full Services Commencement Date has or has been deemed to have occurred in accordance with Clause 20.6 of this Agreement prior to the first day of Month t which would exceed the Maximum Monthly Certification Cap (**the Excess Rented and Leasehold Dwellings**) shall be placed on a list to be compiled and maintained by the Contractor (**the Contractor's Excess Rented and Leasehold Dwellings List**) and the City Council shall continue to pay the Interim Annual Rented Dwelling Charge and/or Interim Annual Leasehold Dwelling Charge (as relevant) in respect of such Excess Rented and Leasehold Dwellings notwithstanding that the Full Services Commencement Date has occurred or has been deemed to have occurred in accordance with Clause 20.6 of this Agreement in respect of those Excess Rented and Leasehold Dwellings until the Contractor serves on the City Council a notice (**the Full Annual Rented and Leasehold Dwelling Commencement Notice**) in accordance with paragraph 2.5 (iii) below;
- (iii) the Contractor shall only be entitled to serve a Full Annual Rented and Leasehold Dwelling Commencement Notice on the City Council in any Month (Month t) in respect of any Excess Rented and Leasehold Dwellings on the Contractor's Excess Rented and Leasehold Dwellings List if by doing so would not result in the Maximum Monthly Certification Cap for Month t being exceeded. The City Council shall pay to the Contractor the relevant Full Annual Rented Dwelling Charge and/or the Full Annual Leasehold Dwelling Charge pursuant to paragraph 2.5 for those Excess Rented and Leasehold Dwellings in respect of which a Full Annual Rented and Leasehold Dwelling Commencement Notice has been correctly served pursuant to this paragraph 2.5(iii) (and cease to pay the Interim Annual Rented Dwelling Charge and/or the Interim Annual Leasehold Dwelling

Charge pursuant to paragraph 2.4 in respect of those Excess Rented and Leasehold Dwellings) from the first day of the Month next occurring following the date of receipt by the City Council of the Full Annual Rented and Leasehold Dwelling Commencement Notice.

## 2.6 The Interim Annual Rented Dwelling Charge

The Interim Annual Rented Dwelling Charge for each Rented Dwelling in Financial Year  $y$  shall be calculated as follows:

$$IARDC_y = (IBRDC \times 76\%) + (IBRDC \times 24\% \times I_y)$$

Where:

- (a)  $IARDC_y$  is the Interim Annual Rented Dwelling Charge for Financial Year  $y$  ;
- (b)  $IBRDC$  is Interim Base Rented Dwelling Charge and
- (c)  $I_y$  is the Indexation Factor.

## 2.7 The Full Annual Rented Dwelling Charge

The Full Annual Rented Dwelling Charge for each Rented Dwelling in Financial Year  $y$  shall be calculated as follows:



Where:

- (a)  $FARDC_y$  is the Full Annual Rented Dwelling Charge for Financial Year  $y$ ;
- (b)  $FBRDC$  is the Full Base Rented Dwelling Charge and
- (c)  $I_y$  is the Indexation Factor.

## 2.8 The Interim Annual Leasehold Dwelling Charge

The Interim Annual Leasehold Dwelling Charge for each Leasehold Dwelling in Financial Year  $y$  shall be calculated as follows:

$$IALDC_y = (IBLDC \times 76\%) + (IBLDC \times 24\% \times I_y)$$

Where:

- (a)  $IALDC_y$  is the Interim Annual Leasehold Dwelling Charge for Financial Year  $y$  ;
- (b)  $IBLDC$  is Interim Base Leasehold Dwelling Charge and
- (c)  $I_y$  is the Indexation Factor.

## 2.9 The Full Annual Leasehold Dwelling Charge

The Full Annual Leasehold Dwelling Charge for each Leasehold Dwelling in Financial Year y shall be calculated as follows:

$$FALDC_y = (FBLDC \times 76\%) + (FBLDC \times 24\% \times I_y)$$

Where:

- (a) FALDC<sub>y</sub> is the Full Annual Leasehold Dwelling Charge for Financial Year y;
- (b) FBLDC is the Full Base Leasehold Dwelling Charge and
- (c) I<sub>y</sub> is the Indexation Factor.

## 2.10 Indexation

- (a) The Indexation Factor shall be calculated as follows:

$$I_y = \frac{I_{y-1}}{I_b}$$

Where:

- (a) I<sub>y</sub> is the Indexation Factor;
  - (b) I<sub>y-1</sub> is the RPIX published for the February preceding Financial Year y ; and
  - (c) I<sub>b</sub> is the RPIX published for April 2010, which for the avoidance of doubt is 222.0.
- (b) If RPIX cannot be determined as a result of the RPIX for the month of February in the Financial Year preceding Financial Year y (Financial Year y-1) not having been published by the final day of the first Month of Financial Year y or the provisions of this paragraph 2.10 apply and no alternative index has been agreed or determined for Financial Year y, the figure to be used for the purposes of calculating the Monthly Unitary Charge in Financial Year y shall be deemed to be the last available figure which could be ascertained pending publication of the relevant RPIX or agreement or determination of the alternative index (as appropriate). On publication of the relevant RPIX or on agreement or determination of the alternative index (as appropriate), the Monthly Unitary Charge for Financial Year y (calculated in accordance with the foregoing) shall be recalculated using the published RPIX or agreed or determined index. The balance between the Monthly Unitary Charge made and such recalculated Monthly Unitary Charge using the published RPIX or alternative index shall be added to or deducted from (as the case may be) the Monthly Unitary Charge for the Month following the Month of such agreement or determination or, if the Month of such agreement or determination is the Month in which the Expiry Date or the Termination Date occurs (as the case may be), shall be immediately due as a debt from one party to the other.

## 2.11 **Maximum Monthly Certification Cap**

For the purposes of calculating the Full Services Fee ( $FSF_t$ ) for each Month (Month  $t$ ), the maximum number of Rented Dwellings and/or Leasehold Dwellings which can be treated as having received a Certificate of Availability pursuant to Clause 20 of this Agreement prior to commencement of the Month (Month  $t$ ) set out in column 1 of the table at Appendix 6 shall not exceed the corresponding amount for Month  $t$  as set out in column 2, 3 or 4 (as relevant) of the table at Appendix 6 of the Payment Mechanism (the **Maximum Monthly Certification Cap**).

## **PART 3: UNAVAILABILITY DEDUCTION**

### **3.1 Notification of Unavailability**

- (a) The City Council, Tenant or a Leaseholder or City Council Related Party may notify the Contractor of any circumstances of which it becomes aware which is believed to constitute Unavailability of a Rented Dwelling, Leasehold Dwelling or Facility by notifying the Help Desk.
- (b) The Contractor or any Contractor Related Party shall also, as soon as reasonably practicable, notify the Help Desk of any circumstances of which it becomes aware which will render a Rented Dwelling, Leasehold Dwelling or Facility Unavailable.

### **3.2 Recording of Unavailability**

The Help Desk shall immediately upon receipt of any notification pursuant to paragraph 3.1 record:

- (a) the date and time of the notification;
- (b) details of the relevant fault;
- (c) the identity of the person making the notification;
- (d) the Rented Dwelling, Leasehold Dwelling or Facility to which it relates;
- (e) the Contractor's decision as to whether or not Unavailability has occurred;
- (f) whether the incident should be recorded as an Emergency Repair, Priority Repair or General Repair (as defined in Appendix 4 of the Payment Mechanism); and
- (g) the reasons for these decisions based on the information provided to it.

### **3.3 Deemed Notification**

Where a notification made pursuant to paragraph 3.1 relates to a Priority Repair or General Repair and is made outside of the Working Day then for the purposes of paragraphs 3.1, 3.2 and 3.4 the notification shall be deemed to have been received by the Contractor at 9am on the next Working Day.

### **3.4 Responding to notifications of Unavailability**

- (a) The Contractor shall assess the Unavailability which has been notified to the Helpdesk in accordance with paragraph 3.1 and issue to:
  - (i) any person making a notification pursuant to paragraph 3.1(a) where such person is not the Tenant or Leaseholder; and

- (ii) the Tenant of the Rented Dwelling or Leaseholder of the Leasehold Dwelling to which the notified circumstances relate or to all of the Tenants and Leaseholders who have use of the Facility to which the notified circumstances relate,

a notice in plain English specifying (to the extent that each of the following can be determined by the Contractor using reasonable endeavours):

- (i) the cause of the Unavailability
  - (ii) a unique reference number in respect of each such notification;
  - (iii) the Contractor's plans for Rectifying any Unavailability and the estimated period in which the Unavailability will be Rectified.
- (b) If following a notification made pursuant to paragraph 3.1(a) the Contractor does not agree that the Rented Dwelling, Leasehold Dwelling or Facility is Unavailable, and that as a consequence it does not propose to take any action in connection with the circumstances so notified, the Contractor shall serve a notice (**Contractor's Availability Notice**), quoting the unique reference number given pursuant to paragraph 3.4(a), on the persons to whom the unique reference number was provided pursuant to paragraph 3.4(a). If such persons do not include the City Council then a copy of the Contractor's Availability Notice shall also be provided to the City Council. If the Contractor's Availability Notice does not result in a Disputed Notification (as defined in paragraph 3.4(c)(i) the relevant Rented Dwelling, Leasehold Dwelling or Facility (as the case maybe) shall not be treated as ever being Unavailable in consequence of the notification that led to the making of the Contractor's Availability Notice.
- (c) If following receipt of a Contractor's Availability Notice a complaint is made to the City Council or to the Contractor within three Working Days of receipt, by way of a further notification pursuant to paragraph 3.1(a) or otherwise, concerning the subject matter of the Contractor's Availability Notice then:
- (i) such complaint (which if made to the City Council shall be notified by the City Council to the Contractor in accordance with paragraph 3.1(a)) shall be logged by the Contractor in the Contractor's Record with the same unique reference number as that set out in the Contractor's Availability Notice and marked as a disputed notification (**the Disputed Notification**); and
  - (ii) The City Council shall be entitled to inspect the Rented Dwelling, Leasehold Dwelling or Facility which is the subject of the Disputed Notification. Such inspection shall be carried out by the City Council:
    - (a) within three (3) Working Days of receipt by the City Council of the Disputed Notification if less than ten (10) Disputed Notifications have been received in any Month; or



(b) within five (5) Working Days of receipt by the City Council of the Disputed Notification if ten (10) or more Disputed Notifications have been received in any Month.

(iii) If following such inspection the City Council disagrees with the Contractor's Availability Notice it shall give notice to the Contractor to that effect as soon as reasonably practicable, and in any event within one Working Day of such inspection, and require the Contractor to Rectify any alleged Unavailability. For the purposes of calculating Unavailability Deductions in accordance with paragraph 3.9, that Rented Dwelling, Leasehold Dwelling or Facility shall be deemed to have been Unavailable:

(a) from the day of receipt of notification which resulted in service by the Contractor of the Contractor's Availability Notice where the City Council has carried out the inspection of such Rented Dwelling, Leasehold Dwelling or within the relevant time period set out in paragraph 3.4(c)(ii); or

(b) from the day on which the City Council carried out the inspection of such Rented Dwelling, Leasehold Dwelling or Facility where The City Council has failed to carry out the inspection of such Rented Dwelling, Leasehold Dwelling or Facility within the relevant period set out in paragraph 3.4(c)(ii).

(iv) The Contractor may refer the Disputed Notification to the Dispute Resolution Procedure. If it is subsequently agreed or determined that the Rented Dwelling, Leasehold Dwelling or Facility the subject of the Disputed Notification was Available at the time of issue of the Contractor's Availability Notice, the City Council shall pay to the Contractor the Abortive Remedial Costs, together with the value of the Unavailability Deductions made in respect of that Rented Dwelling, Leasehold Dwelling or Facility, in the next payment of the Monthly Unitary Payment following such determination.

### **3.5 Commencement and Duration of Unavailability**

(a) Subject to paragraphs 3.4(c)(iii), 3.6 and 3.7, for the purpose of calculating the Unavailable days for a Rented Dwelling, Leasehold Dwelling or Facility in any Month for the purposes of paragraph 3.9, Unavailability in respect of a Rented Dwelling, Leasehold Dwelling or Facility shall:

(i) be deemed to have commenced on the day notification is received by the Contractor pursuant to paragraph 3.1 or has been deemed to have been received by the Contractor pursuant to paragraph 3.3; and

(ii) be deemed to continue up to and including the day upon which the Works Completion Certificate is served by the Contractor on the City Council and relevant Tenant(s) and Leaseholder(s) and relevant City Council Related Parties.

(b) If two or more separate incidents of Unavailability occur in any Rented Dwelling, Leasehold Dwelling or Facility on the same day, then the

relevant Rented Dwelling, Leasehold Dwelling or Facility shall only be counted once each day in order to determine the Unavailable days.

- (c) There shall be no requirement to notify the Contractor pursuant to paragraph 3.1 for each day for which a Rented Dwelling, Leasehold Dwelling or Facility remains Unavailable, if such Unavailability continues for more than one day as a result of the continuation of the circumstances which gave rise to the Unavailability on the first day.

### **3.6 Rectification within the Rectification Period**

- (a) if the Contractor Rectifies the Unavailability in respect of a Rented Dwelling, Leasehold Dwelling or Facility within the relevant Rectification Period, the days upon which the Rented Dwelling, Leasehold Dwelling or Facility is deemed to be Unavailable pursuant to paragraph 3.5 shall be deemed to be zero;
- (b) if the Contractor has not Rectified the Unavailability of a Rented Dwelling, Leasehold Dwelling or Facility within the relevant Rectification Period the relevant Rented Dwelling, Leasehold Dwelling or Facility shall be deemed to have been Unavailable from the day of receipt of notification by the Contractor pursuant to paragraph 3.1;
- (c) where Temporary Rectification is permitted in the Output Specification, if the Contractor Temporarily Rectifies the Unavailability in respect of a Rented Dwelling, Leasehold Dwelling or Facility within the Temporary Rectification Period and Permanently Rectifies the Unavailability within the Permanent Rectification Period, the days upon which the Rented Dwelling, Leasehold Dwelling or Facility is deemed to be Unavailable pursuant to paragraph 3.5 shall be deemed to be zero;
- (d) where Temporary Rectification is permitted in the Output Specification, if the Contractor Temporarily Rectifies the Unavailability in respect of a Rented Dwelling, Leasehold Dwelling or Facility within the Temporary Rectification Period but does not Permanently Rectify the Unavailability within the Permanent Rectification Period, the relevant Rented Dwelling, Leasehold Dwelling or Facility shall be deemed to have been Unavailable from the day of receipt by the Contractor of notification pursuant to paragraph 3.1; and
- (e) where Temporary Rectification is permitted in the Output Specification, if the Contractor fails to Temporarily Rectify the Unavailability in respect of a Rented Dwelling, Leasehold Dwelling or Facility within the Temporary Rectification Period but Permanently Rectifies the Unavailability within the Permanent Rectification Period, the relevant Rented Dwelling, Leasehold Dwelling or Facility shall be deemed to have been Unavailable from the day of receipt by the Contractor of notification pursuant to paragraph 3.1.

### **3.7 No Unavailability**

No Unavailability Deductions shall be made where it has been demonstrated to the reasonable satisfaction of the City Council that

- (a) the relevant Unavailability arises and continues as a direct result of one or more Excusing Events; and
- (b) the relevant Unavailability is not the result of a breach by the Contractor, or Contractor Related Party, of its obligations under this Agreement; and
- (c) the Contractor has taken and is continuing to take all reasonable steps to mitigate the effects of the Excusing Event; and

For the avoidance of doubt the Contractor shall undertake any necessary Rectification regardless of whether an Unavailability Deduction is made.

### 3.8 Works Completion Certificate

- (a) Following Rectification of any Unavailability by the Contractor, the Contractor shall serve on the City Council, Tenants, Leaseholders and City Council Related Parties who have been affected by the Unavailability a Works Completion Certificate.
- (b) If following service of a Works Completion Certificate pursuant to paragraph 3.8 (a) above the City Council or any Tenant(s) or Leaseholder(s) or City Council Related Party disputes within three (3) Working Days that the event of Unavailability the subject of that Works Completion Certificate has not been Rectified such that the Contractor was not entitled to issue the Works Completion Certificate then such dispute shall be deemed to be a new notification of Unavailability by The City Council or Tenant(s) or Leaseholder(s) or City Council Related Party concerned made pursuant to paragraph 3.1 and the provisions of paragraphs 3.1 to 3.8 shall apply mutatis mutandis to the new notification of Unavailability. For the purposes of calculating Unavailability Deductions, that Rented Dwelling, Leasehold Dwelling or Facility shall be deemed to have been Unavailable from the original day of notification pursuant to paragraph 3.1.

### 3.9 Unavailability Deduction

Subject to Part 7 of the Payment Mechanism, the Unavailability Deduction for a Month (Month t) shall be calculated using the following formula:

$$UD_t = IUD_t + FUD_t + FAUD_t + ECUD_t$$

Where:

- (a)  $UD_t$  is the Unavailability Deduction for Month t;
- (b)  $IUD_t$  is the Interim Unavailability Deduction for Month t;
- (c)  $FUD_t$  is the Full Unavailability Deduction for Month t; and
- (d)  $FAUD_t$  is the Facility Unavailability Deduction for Month t.
- (e)  $ECUD_t$  is the Environmental and Communal Works Unavailability Deduction for Month t.

### 3.10 Interim Unavailability Deduction

The Interim Unavailability Deduction ( $IUD_t$ ) for a Month (Month t) shall be calculated by using the following formula:

$$\left[ \frac{IARDC_y}{D_y} \right] \times \sum_{\substack{n \\ \text{Rented} \\ \text{Dwelling}}} [(DU_u \times 0.7) + (DU)] \times RF \quad +$$

$$\left[ \frac{IALDC_y}{D_y} \right] \times \sum_{\substack{n \\ \text{Leasehold} \\ \text{Dwelling}}} [(DU_u \times 0.7) + (DU)] \times RF$$

Where:

(a)  $IUD_t$  is the Interim Unavailability Deduction;

(b)  $IARDC_y$  is the Interim Annual Rented Dwelling Charge;

(c)  $IALDC_y$  is the Interim Annual Leasehold Dwelling Charge;

(d)  $D_y$  is the number of days in the calendar year in which the first day of Month t occurs;

(e)  $DU_u$  is the number of days the Rented Dwelling or Leasehold Dwelling (including any Excess Rented and Leaseholder Dwellings in respect of which a Full Annual Rented and Leasehold Dwelling Commencement Notice has not been served prior to the first day of Month t) is Unavailable But Used in Month t;

(f) RF is the Ratchet Factor referred to in paragraph 3.14(a);

(g) DU is the number of days the Rented Dwelling or Leasehold Dwelling (including any Excess Rented and Leaseholder Dwellings in respect of which a Full Annual Rented and Leasehold Dwelling Commencement Notice has not been served prior to the first day of Month t) is Unavailable in Month t;

(h) n is each Rented Dwelling or Leasehold Dwelling which was Unavailable But Used and/or Unavailable in Month t for which the Full Services Commencement Date has not occurred in accordance with Clause 20 of this Agreement (including any Excess Rented and Leaseholder Dwellings in respect of which a Full Annual Rented and Leasehold Dwelling Commencement Notice has not been served prior to the first day of Month t) prior to the first day of Month t; and

(i)  $\sum$  signifies the summation of the Rented Dwellings or Leasehold Dwellings which were Unavailable But Used and/or Unavailable in Month t for which the Full Services Commencement Date has not occurred in accordance with Clause 20 of this Agreement (including any Excess Rented and Leaseholder Dwellings in respect of which a Full Annual Rented and Leasehold Dwelling Commencement Notice has not been served prior to the first day of Month t) prior to the first day of Month t.

For the avoidance of doubt, for the purposes of calculating the Interim Unavailability Deduction pursuant to this paragraph 3.10:

- (a) on any one day a Rented Dwelling or Leasehold Dwelling may only be classed as being either Unavailable But Used or Unavailable but not both;
- (b) any Rented Dwelling or Leasehold Dwelling which is classed as an Excess Rented and Leaseholder Dwellings and has not had served in respect of it a Full Annual Rented and Leasehold Dwelling Commencement Notice prior to the first day of Month t shall, for the purposes of calculating the Unavailability Deduction for Month t, be included in the calculation of the Interim Unavailability Deduction pursuant to this paragraph 3.10; and
- (c) references to Rented Dwellings shall not include Retail Unit, Community Centre and Housing Office.

### 3.11 The Full Unavailability Deduction

The Full Unavailability Deduction ( $FUD_t$ ) for a Month (Month t) shall be calculated by using the following formula:

$$+ \left[ \frac{FARDC_y}{D_y} \right] \times \sum_{\substack{n \\ \text{Rented} \\ \text{Dwelling}}} [(DU_u \times 0.7) + (DU)] \times RF$$

$$+ \left[ \frac{FALDC_y}{D_y} \right] \times \sum_{\substack{n \\ \text{Leasehold} \\ \text{Dwelling}}} [(DU_u \times 0.7) + (DU)] \times RF$$

Where:

(a)  $FUD_t$  is the Full Unavailability Deduction;

(b)  $FARDC_y$  is the Full Annual Rented Dwelling Charge;

(c)  $FALDC_y$  is the Full Annual Leasehold Dwelling Charge;

(d)  $D_y$  is the number of days in the calendar year in which the first day of Month t occurs;

(d)  $DU_u$  is the number of days the Rented Dwelling or Leasehold Dwelling (including any Excess Rented and Leaseholder Dwellings in respect of which a Full Annual Rented and Leasehold Dwelling Commencement Notice has been served prior to the first day of Month t) is Unavailable But Used in Month t;

(e)  $RF$  is the Ratchet Factor referred to in paragraph 3.14(a);

(f)  $DU$  is the number of days the Rented Dwelling or Leasehold Dwelling (including any Excess Rented and Leaseholder Dwellings in respect of which a Full Annual Rented and Leasehold Dwelling Commencement Notice has been served prior to the first day of Month t) is Unavailable in Month t; and

(g)  $n$  is each Rented Dwelling or Leasehold Dwelling which was Unavailable But Used and/or Unavailable in Month t for which the Full

Services Commencement Date has occurred in accordance with Clause 20 of this Agreement (including any Excess Rented and Leaseholder Dwellings in respect of which a Full Annual Rented and Leasehold Dwelling Commencement Notice has been served prior to the first day of Month t) prior to the first day of Month t; and

- (h)  $\sum$  signifies the summation of all Rented Dwellings or Leasehold Dwellings which were Unavailable But Used and/or Unavailable in Month t for which the Full Services Commencement Date has occurred in accordance with Clause 20 of this Agreement (including any Excess Rented and Leaseholder Dwellings in respect of which a Full Annual Rented and Leasehold Dwelling Commencement Notice has been served prior to the first day of Month t) prior to the first day of Month t.

For the avoidance of doubt, for the purposes of calculating the Full Unavailability Deduction pursuant to this paragraph 3.11:

- (a) on any one (1) day a Rented Dwelling or Leasehold Dwelling may only be classed as being either Unavailable But Used or Unavailable but not both; and
- (b) any Rented Dwelling or Leasehold Dwelling which is classed as an Excess Rented and Leaseholder Dwellings and has had served in respect of it a Full Annual Rented and Leasehold Dwelling Commencement Notice in Month t shall, for the purposes of calculating the Unavailability Deduction for Month t, be included in the calculation of the Full Unavailability Deduction pursuant to this paragraph 3.11 (as opposed to the Interim Unavailability Deduction pursuant to paragraph 3.10) from and including the first day of Month t next following the date of receipt by the City Council of a Full Annual Rented and Leasehold Dwelling Commencement Notice.

### 3.12 Facility Unavailability Deduction

The Facility Unavailability Deduction for a Month (Month t) shall be calculated by using the following formula:

$$FAUD_t = \sum_{Facility}^n \left[ \frac{FC_y}{D_y} \right] \times [DU \times RF]$$

Where:

- (a)  $FAUD_t$  is the Facility Unavailability Deduction;
- (b)  $FC_y$  is the Facility Charge for each Facility for the Financial Year (Financial Year y) in which Month t occurs;

- (c)  $D_y$  is the number of days in the calendar year in which the first day of the Month  $t$  occurs;
- (d)  $DU$  is the number of days the Facility is Unavailable in Month  $t$ ;
- (e)  $RF$  is the Ratchet Factor referred to in paragraph 3.14(a);
- (f)  $n$  is each Facility which was Unavailable in Month  $t$ ; and
- (g)  $\sum$  signifies the summation of all Facilities which were Unavailable in Month  $t$ .

The Facility Charge for each Facility in Financial Year  $y$  shall be calculated as follows:

$$FC_y = (FBC \times 76\%) + (FBC \times 24\% \times I_y)$$

where:

- (a)  $FC_y$  is the Facility Charge for Financial Year  $y$ ;
- (b)  $FBC$  is the Facility Base Charge; and
- (c)  $I_y$  is the Indexation Factor for Financial Year  $y$ .

For the avoidance of doubt where a Facility is a New Build Property or there are no Interim Availability Standards in respect of that Facility, no Facility Unavailability Deduction shall be incurred prior to the Full Services Commencement Date for that Facility.

### 3.13 Environmental and Communal Work Unavailability Deduction

The Environmental and Communal Works Unavailability Deduction for a Month (Month  $t$ ) shall be calculated by using the following formula:

$$ECUD_t = \sum^n (BC_n \times RF) / 12$$

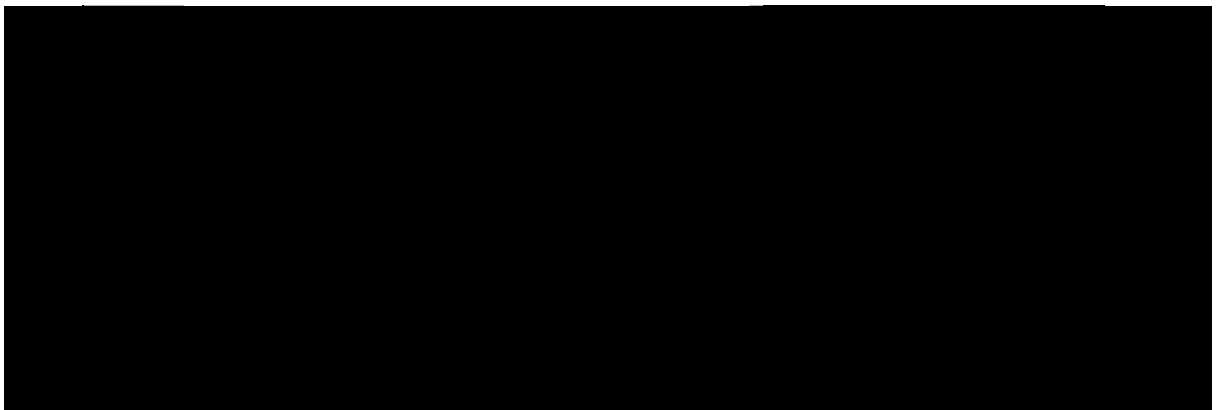
Where:

- (a)  $ECUD_t$  is the Environmental and Communal Works Unavailability Deduction;
- (b)  $BC_n$  is the Base Charge for each Environmental and Communal Works Area in which Month  $t$  occurs;

- (c) RF is the Ratchet Factor referred to in paragraph 3.14(b);
- (d) n is each Environmental and Communal Works Area for which neither a Certificate of Completion (Environmental Works and Communal Works) nor a Final Certificate of Adoption (as applicable) has been issued by the relevant Long Stop Date and has not been issued in Month t;
- (e)  $\sum$  signifies the summation of all Environmental and Communal Works Areas for which neither a Certificate of Completion (Environmental Works and Communal Works) nor a Final Certificate of Adoption (as applicable) has been issued in Month t; and
- (f) For the avoidance of doubt ECUD<sub>t</sub> is a monthly charge that will be applied following failure to complete works (as evidenced by the issue of either a Certificate of Completion (Environmental Works and Communal Works) or a Final Certificate of Adoption (as applicable)) by the agreed Long Stop Date for each Environmental and Communal Works Area and thereafter for each consecutive month that such work at an Environmental and Communal Works Area fails to be completed.

**3.14 Ratchet Factor**

- (a) The Ratchet Factor (RF) to be applied at paragraphs 3.10, 3.11 and 3.12 (in respect of Appendix 3 shall be determined as follows:



For the avoidance of doubt the above Ratchet Factor shall apply on a banded approach i.e. for an Unavailability period of 20 days in any one month the Ratchet applied will be 1.0 in respect of days 1 to 7, 1.5 in respect of days 8 to 15 and 2.5 in respect of days 16 to 20. In addition, the Ratchet Factor will be re-set to 1.0 at the start of each Month.

- [Redacted]
- [Redacted]
- [Redacted]



- [REDACTED]
- [REDACTED]
- [REDACTED]
- (c) In respect of the Ratchet Factor (RF) described at paragraph 3.14(a) only, in respect of the Ratchet Factor of a Rented Dwelling, Leasehold Dwelling or Facility where a breach occurred, should there be a further breach of the same Availability Standard in the following Contract Month the Ratchet Factor will be applied taking account of the Days where Unavailability occurred in the previous consecutive Contract Month(s).
- (d) In respect of the Ratchet Factor (RF) described at paragraph 3.14(a) only, there shall be no Rectification Period for any Unavailability which occurs within [REDACTED] of the Rectification of a failure in respect of the same Availability Standard in the same Rented Dwelling, Leasehold Dwelling or Facility. However, where the incident is shown by the Contractor not to be due to the same fault then the City Council, acting reasonably, will review its decision as to whether a second Rectification Period is allowable.
- (e) In respect of the Ratchet Factor (RF) described at paragraph 3.14(a) only, periods of Unavailability Rectified within the applicable Rectification Period shall not count towards the total numbers of Days that the Rented Dwelling, Leasehold Dwelling or Facility has been Unavailable.
- (f) Provided that the Contractor has complied with the requirements of clause 51 (Relief Events) and/or clause 39 (Termination on Force Majeure), the Ratchet Factors described at paragraphs 3.14(a) and 3.14(b) shall not be applied pursuant to paragraphs 3.10, 3.11, 3.12 and 3.13 for the period that relief is afforded to the Contractor pursuant to clause 51 (Relief events) and/or clause 39 (Termination on Force Majeure) in circumstances where an event of Unavailability is the direct consequence of a Relief Event or a Force Majeure Event.

### **3.15 Temporary Alternative Accommodation**

- (a) Where there is an instance of Unavailability the Contractor shall propose Temporary Alternative Accommodation as laid out in Annex 13 of the Output Specification and relief from Deductions shall apply as per this Annex 13.
- (b) The Payment Mechanism regime as set out in this Schedule 5 will apply to any Temporary Alternative Accommodation accepted so that the City Council shall be entitled to make Unavailability and Performance Deductions in respect of that Temporary Alternative Accommodation in accordance with this Schedule 5.

### 3.16 City Council Alternative Accommodation

- (a) Where a Rented Dwelling, Leasehold Dwelling or Facility, has become Unavailable and the Contractor has failed to offer the Tenant or Leaseholder any Temporary Alternative Accommodation and where the parties acting reasonably have agreed that it will not be possible to Rectify the Unavailability within 24 hours of either the Contractor having failed to make an offer to the Tenant or Leaseholder of Temporary Alternative Accommodation within the relevant proposal period or the Tenant or Leaseholder refusing to accept any Temporary Alternative Accommodation offered to it on the grounds set out in Annex 13 to the Output Specification, the City Council shall be entitled (but not bound) to take such steps or procure the taking of such steps as are necessary to find its own alternative accommodation (the **City Council Alternative Accommodation**)
  
- (b) The City Council will be entitled to deduct from the Monthly Unitary Charge the higher of;
  - (i) all reasonable and evidenced costs that it has incurred in the provision of such City Council Alternative Accommodation or;
  - (ii) the Unavailability Deduction that would have occurred had the City Council not provided the alternative accommodation.

## PART 4: PERFORMANCE DEDUCTIONS

### 4.1 City Council's right to make deductions

In the event of a Service Performance Failure by the Contractor, the City Council may make Performance Deductions from the Monthly Unitary Charge in accordance with this Schedule 5.

### 4.2 Performance Deductions

The Performance Deduction (PD) in respect of each Contract Month (Month t) shall be calculated as follows:

$$PD_t = \sum_{KPI} [PF_t \times (MUC_t \times PCF)]$$

Where:

- (a)  $PD_t$  is the value of the Performance Deduction for Contract Month t;
- (b)  $PF_t$  is the Performance Factor for Month t shown as a % and calculated in accordance with 4.3 below;
- (c)  $MUC_t$  is the Monthly Unitary Charge for Contract Month t; and
- (d) PCF is the Performance Calibration Factor of [REDACTED]

### 4.3 Calculating the Performance Factor (PF)

The Performance Factor (PF) will be calculated as the lower of:

- (i) 100%; and
- (ii)  $\sum_{KPI}^n [WF \times FT] \times PRF$

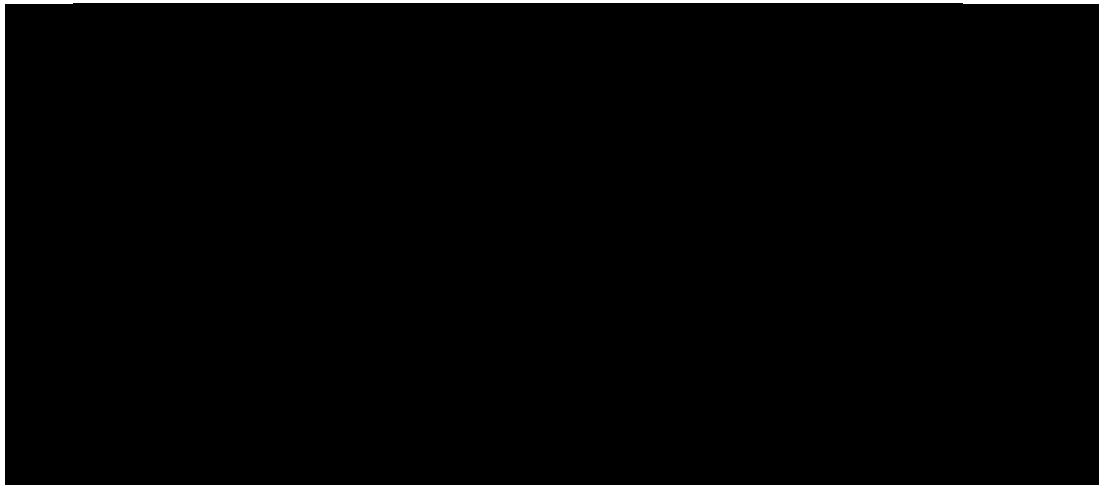
where:

- (a) WF is the Weighting Factor applied to each Key Performance Indicator Standard (as shown in column 5 of Appendix 2 of the Payment Mechanism) which, for the avoidance of doubt, reflects the relative importance the City Council places on that KPI.
- (b) FT is the Failure Type being minor, moderate or major determined by reference to the thresholds for each Key Performance Indicator Standard set out in columns 6, 7 and 8 of Appendix 2 to the Payment Mechanism and being [REDACTED]. For the avoidance of doubt, FT for KPI performance at a level which exceeds the minor threshold will be deemed to be [REDACTED].

- (c) n is each of the Key Performance Indicator Standards in respect of which Service Performance Failures occurred in Month t;
- (d)  $\sum$  signifies the summation of the Key Performance Indicators Standards in respect of which Service Performance Failures occurred in Month t; and
- (e) PRF is the Performance Ratchet Factor for Contract Month t calculated in accordance with paragraph 4.4.

#### 4.4 Calculating the Performance Ratchet Factor (PRF)

Should it be discovered that a Service Performance Failure of the same KPI (irrespective of whether this was minor, moderate or major) had occurred in the previous Contract Month and any previous consecutive Contract Months, a Performance Ratchet factor will apply to that KPI as follows:



For the avoidance of doubt, the Performance Ratchet Factor for a KPI shall be reset to 1 (one) in the month where the FT for a KPI is deemed to be 0%.

Provided that the Contractor has complied with the requirements of clause 51 (Relief Events) and/or clause 39 (Termination on Force Majeure), the Performance Ratchet Factor shall not be applied pursuant to paragraph 4.3 if and to the extent any Service Performance Failure occurs as a consequence of a Relief Event or a Force Majeure Event.

#### 4.5 No Performance Deductions

No Performance Deductions shall be made where it has been demonstrated to the reasonable satisfaction of the City Council that:

- (a) the relevant Service Performance Failure arises and continues as a direct result of one or more Excusing Events; and
- (b) the instance of Service Performance Failure is not the result of a breach by the Contractor, or Contractor Related Party, of its obligations under this Agreement; and

- (c) the Contractor has taken and is continuing to take all reasonable steps to mitigate the effect of the Excusing Event; and

For the avoidance of doubt, the Contractor shall undertake any necessary rectification regardless of whether a Performance Deduction is made.

## PART 5 – REPORTING DEDUCTIONS

- (a) If it has been agreed between the City Council and the Contractor or determined in accordance with Clause 62 *Dispute Resolution* that a mistake has been made by the Contractor in calculating the Monthly Unitary Charge in respect of a Month (either by failing to take into account all incidences of Unavailability or Service Performance Failures which have occurred in that Month or by failing to deduct all items listed in paragraph 2.1 from the Monthly Unitary Payment which the City Council is entitled to so deduct) (a **Reporting Failure**) , then the City Council shall be entitled to make a Reporting Deduction of █████(indexed).
- (b) Should the City Council and Contractor disagree over whether a Reporting Failure has occurred the City Council shall still be entitled to impose Reporting Deductions. The Contractor, at its discretion, may refer the matter to the Dispute Resolution Procedure.
- (c) All Reporting Deductions made by the City Council shall be made from two months after the Reporting Failure has been agreed or determined.
- (d) No Reporting Deductions shall apply if the Contractor has amended the Reporting Failure for a Contract Month prior to the City Council paying the Monthly Unitary Payment for that Contract Month.

## **PART 6: OTHER ADJUSTMENTS**

- 6.1 Part 6 relates to any Other Adjustments which are due to be paid or received by the City Council under any terms and conditions of this Agreement in the relevant Payment Period (where applicable).
- 6.2 All such adjustments to the Monthly Unitary Charge will be recorded as part of the Monthly Monitoring Report.
- 6.3 Other Adjustments includes, but is not limited to, the following items;
  - a) any costs arising from the Temporary Alternative Accommodation Protocol as laid out in Annex 13 of the Output Specification.
  - b) any costs arising from paragraph 5.3 of the Tenant Waiver Protocol.
  - c) any costs arising from paragraph 9 of the Tenant Improvement Protocol.
  - d) any costs arising from paragraph 6 of the Tenant and Third Party Damage Protocol.
  - e) Agreed Abatements in accordance with Part 9 of Schedule 5 (Payment Mechanism).
  - f) Abortive Remedial Costs.
  - g) any costs agreed by the parties prior to such costs being incurred.

## **PART 7: LIMITATIONS ON DEDUCTIONS**

### **7.1 Overall Cap**

The City Council may not, in respect of any Month (Month t) make Deductions from the Monthly Unitary Charge for Month t which are greater than the Monthly Unitary Charge for Month t. Any excess Unavailability and Performance Deductions which, but for this paragraph, could have been made by the City Council will be permanently disregarded for the purposes of this Schedule 5 (Payment Mechanism). For the avoidance of doubt this provision does not apply to Reporting Deductions or Other Adjustments.

### **7.2 Cap on Performance Deductions**

The City Council may not, in respect of any Contract Month, make Performance Deductions which are greater than [REDACTED] of the Monthly Unitary Charge. Performance Deductions which, but for this paragraph, could have been made by the City Council will be permanently disregarded for the purposes of paragraph 2.1 of this Schedule 5 only.

### **7.3 Bedding in Period**

For each of the three (3) Contract Months immediately following the Initial Service Commencement Date (Refurbishment) the City Council may not make Deductions which are greater than indicated in the table below. Any excess Deductions which, but for this paragraph, could have been made by the City Council will be disregarded for the purposes of paragraph 2.1 (calculation of the Monthly Unitary Payment) but will count towards paragraph 4.4 (Performance Deductions Ratchet Factor) from Contract Month 4 onwards. For the avoidance of doubt any excess Deductions will not count towards paragraph 3.13 (Unavailability Ratchet Factor).

<b>Contract Month immediately following Initial Services Commencement Date (Refurbishment)</b>	<b>% of total Deductions to be applied in Contract Month</b>
1	0
2	33
3	66
4 onwards	100



## **PART 8 MONITORING AND REPORTING**

### **8.1 Monthly Monitoring Report**

The Monthly Monitoring Report shall be prepared by the Contractor in such form as the parties acting reasonably shall agree but not withstanding that it shall contain the following information.

#### **8.1.1 Monthly Unitary Payment**

With regard to Monthly Unitary Payment, details and a calculation of:

- the Monthly Unitary Charge due in respect of Month t
- the Unavailability Deduction in respect of Month t-2
- the Performance Deduction in respect of Month t -2
- the Reporting Deduction in respect of Month t-2
- any Other Adjustments (if applicable) for Month t
- the CNDT Compensation for Month t.

#### **8.1.2 Unavailability Deductions**

With regard to Unavailability:

(a) a summary assessment of all notifications by any person (including the Contractor or Contractor Related Party) to the Help Desk of circumstances which it was believed by that individual to constitute Unavailability in the Month 2 months prior to Month t(Month t-2);

(b) a reasonably detailed description of all events which the Contractor agreed constituted or which a notifying person alleged, but the Contractor did not accept, constituted Unavailability during Month t-2:

(c) a summary of all Contractors' Availability Notices issued during Month t-2, where the Contractor did not agree that the Rented Dwelling, Leasehold Dwelling or Facilities were Unavailable pursuant to Part 3 of the Payment Mechanism.

(d) the Rented Dwellings, Leasehold Dwellings or Facilities affected by Unavailability;

(e) the total duration and cause of each event of Unavailability (including the time and date upon which the same commenced and, where relevant, ceased and the unique identification number given to the relevant person in accordance with paragraph 3.4. (a) for each instance of Unavailability and in relation to any continuing Unavailability the expected date for the end of Unavailability;

(f) any other factors that the Contractor acting reasonably considers relevant; and

(g) the number of events of Unavailability the subject of a Contractor's Availability Notice which either party has referred to the Dispute Resolution Procedure but not yet determined.

### **8.1.3 Performance Deductions**

With regard to Performance Deductions

- (a) a summary assessment of the Key Performance Indicator Standards shown in Appendix 2 of the Payment Mechanism during the Month t-2.
- (b) a list of all the Service Performance Failures that occurred during Month t-2 and the resulting Performance Factor that subsequently applied for that Month and;
- (c) the details of any Performance Ratchet Factors that applied for Month t-2.

## **Part 9 CHANGE PROTOCOL DEDUCTIONS**

- 9.1 Agreed Abatements shall apply in the manner set out in paragraph 9.2 below and will be treated as Other Adjustments in line with paragraph 6.3(e).
- 9.2 Where the Contractor fails to meet the requirements of paragraph 6.3 of Part 1 of Schedule 26 (Change Protocol) then the City Council shall (in accordance with paragraph 6.3 of Part 1 of Schedule 26) be entitled to impose Agreed Abatements of [REDACTED] per day from the date the Contractor Response should have been submitted or the Change should have been completed or implemented until the date the relevant Contractor Response is actually submitted or the Change is actually completed or implemented (as the case may be).

[REDACTED]

[REDACTED]



[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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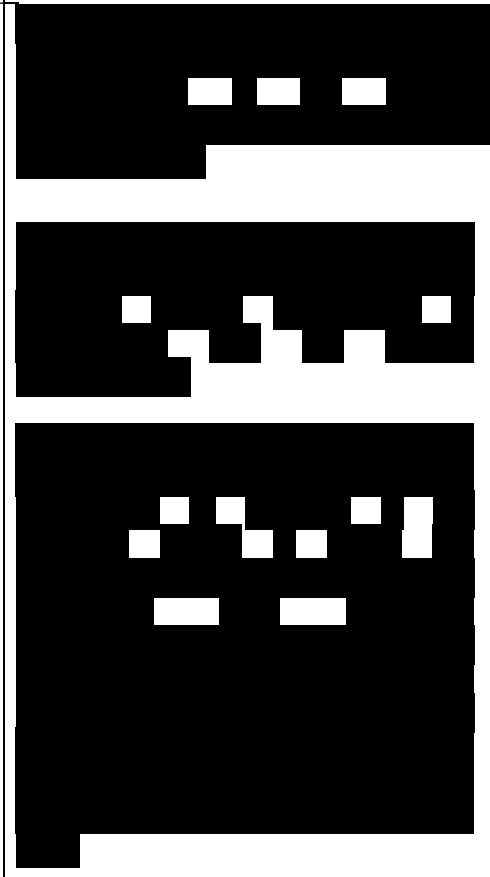

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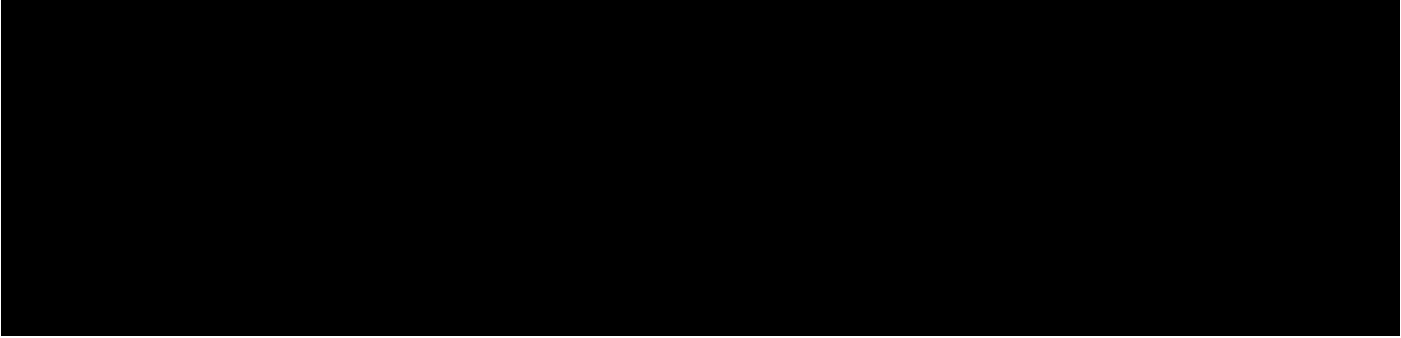
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]			[REDACTED]	

**SCHEDULE 6**

**Collateral Warranties**

**Part 1 - Building Contractor**

**DATED**

**2013**

**(1) LEEDS CITY COUNCIL**

**- and -**

**(2) FRANK HASLAM MILAN & COMPANY LIMITED**

**- and -**

**(3) KEEPMOAT LIMITED and KEEPMOAT REGENERATION LIMITED**

**- and -**

**(4) [CONTRACTOR]**

**BUILDING CONTRACTOR'S DEED OF  
COLLATERAL WARRANTY**

relating to

Little London and Beeston Hill and Holbeck  
HRA Social Housing PFI Project

**BETWEEN**

- (1) **LEEDS CITY COUNCIL** of Civic Hall, Leeds LS1 1UR ("**City Council**"); and
- (2) **FRANK HASLAM MILAN & COMPANY LIMITED** (Company Number 00629404) whose registered office is at Keepmoat, The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire DN4 5PL ("**Building Contractor**"); and
- (3) **KEEPMOAT LIMITED** (Company Number 01998780) registered office is at Keepmoat, The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire DN4 5PL and **KEEPMOAT REGENERATION LIMITED** (Company Number 01738371) registered office is at Keepmoat, The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire DN4 5PL (together the "**Guarantor**"); and
- (4)  (Company Number  ) whose registered office is at  ("**Contractor**").

**BACKGROUND**

- A. The Contractor has entered into an Agreement under the United Kingdom Government's Private Finance Initiative with the City Council pursuant to which the Contractor will demolish and construct or refurbish the Properties and manage and maintain the Properties ("**Project**").
- B. The Contractor and the Building Contractor have entered into the Building Contract pursuant to which the Building Contractor will carry out the Works.
- C. It is a condition of the Agreement and the Building Contract that the Building Contractor provides a warranty in this form ("**Deed**"), in favour of the City Council.
- D. The Guarantor is the parent company of the Building Contractor and agrees to guarantee to the City Council the due and proper performance by the Building Contractor of each and every obligation under this Deed and the Building Contract.
- E. The Building Contractor, the Contractor and the Guarantor have agreed to execute this Deed in favour of the City Council.



**THIS DEED WITNESSES** as follows:

## **1. DEFINITIONS & INTERPRETATION**

1.1 In this Deed, the following words or phrases have the following meanings:

**"Agreement"** means the agreement entered into on or around the date of this Deed (including its schedules and Appendices) between the Contractor and the City Council pursuant to which the Contractor will demolish and construct or refurbish the Properties and manage and maintain the Properties;

**"Building Contract"** means the building contract entered into on or around the date of this Deed in the Agreed Form between the Contractor and the Building Contractor relating to the Works.

1.2 The definitions given in the recitals apply to this Deed.

1.3 Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the meaning given to such term in the Agreement.

1.4 In this Deed, unless the context shall otherwise require or save as expressly defined or provided in this Deed, the following interpretations shall apply:

1.4.1 Number, gender etc

Wording importing:

1.4.1.1 one gender only shall be construed as importing any other gender; and

1.4.1.2 the singular shall be construed as importing the plural and vice versa; and

1.4.1.3 references to persons shall include corporations.

1.4.2 Titles

The clause, sub-clause and (where provided) paragraph headings and captions in the body of this Deed do not form part of this Deed and shall not be taken into account in its construction or interpretation.

### 1.4.3 Recitals

The parties agree that the recitals are true and correct and form part of this Deed.

## 2. WARRANTY

- 2.1 The Building Contractor warrants to the City Council that it has carried out and will continue to carry out all its obligations and duties under and in accordance with and to the standards required by the Building Contract and that it has exercised and will continue to exercise in carrying out the design of the Works the level of skill and care reasonably to be expected from an appropriately qualified and competent designer in relation to a Project of similar size and scope to the Works.
- 2.2 The Building Contractor shall be entitled in any proceedings by the City Council in which the City Council claims any breach of clause 2.1 to rely on any limitation of liability in the Building Contract and to raise equivalent rights in defence of liability (excluding set-off and counterclaims) as it would have had against the Contractor under the Building Contract.
- 2.3 The parties agree that upon the expiry of 12 years from the date of completion of the Works in accordance with the Building Contract, the liability of the Building Contractor under this agreement shall cease and determine, save in relation to any claims made by the City Council against the Building Contractor and notified by the City Council to the Building Contractor in writing prior to the date thereto.
- 2.4 The Building Contractor warrants that, to the extent it is obliged to specify or approve products or materials for use in the Works or does so specify or approve, it has exercised and will continue to exercise reasonable skill, care and diligence in accordance with this Deed to ensure that it has not used and it will not use and it has not authorised or approved and it will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of specification are widely known to members of the Building Contractor's profession within the European Union to be deleterious to health and safety or to the durability 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.

- 2.5 If in the performance of its duties under the Building Contract the Building Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials specified in clause 2.4, the Building Contractor will notify the City Council in writing as soon as reasonably possible after it has become so aware. This clause does not create any additional duty for the Building Contractor to inspect or check the work of others which is not required by the Building Contract.
- 2.6 The rights and obligations of the parties under this Deed (other than those contained in clause 3, 5, 7 and 8) shall not be enforceable unless and until the Agreement has been terminated.

### **3. COPYRIGHT**

- 3.1 In relation to all drawings, details, plans, specifications, reports, calculations and other documents of any nature whatsoever and any designs and inventions contained in them which have been or are hereafter provided by the Building Contractor in the course of carrying out and completing the Works ("**Documents**") the Building Contractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the City Council with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, an irrevocable royalty-free non-exclusive licence to use and to reproduce all Documents for any purpose whatsoever connected with the Project and such other purpose as may be reasonably necessary to enable the City Council to comply with any of its statutory duties. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 3.2 The City Council will not hold the Building Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it.

- 3.3 The Building Contractor warrants to the City Council that the Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in accordance with this clause 3 will not infringe the rights of any third party and (insofar as the Documents are not the Building Contractor's own original work) all royalties or other sums payable in respect of any copyright or the supply and use of any patented articles, processes or inventions required in connection with the Works shall be paid by the Contractor.
- 3.4 The Building Contractor shall indemnify the City Council from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the City Council by reason of the Building Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Building Contract.
- 3.5 The Building Contractor waives irrevocably any rights it may have under Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patents Act 1988 and any foreign corresponding rights and shall obtain a written waiver from its employees, contractors and agents from time to time of any rights they have in respect of the same.
- 3.6 The Building Contractor agrees upon the request at any time of the City Council to execute such documents and perform such acts as may be required fully and effectively to assure to the City Council the rights referred to in clause 3.

#### **4. ENQUIRIES AND INSPECTION**

The obligations of the Building Contractor under this Deed will not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the City Council or by the appointment of any person, firm or company by the City Council to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or company to the City Council arises in connection therewith. For the avoidance of doubt, nothing in this Deed shall oblige the City Council to make any such enquiry or undertake any such inspection.

## 5. PROFESSIONAL INDEMNITY INSURANCE

5.1 The Building Contractor warrants to the City Council that:

5.1.1 the Building Contractor shall without prejudice to its obligations under this Deed and/or at law and/or otherwise take out and maintain:

(a) such insurance as the Building Contractor is required to take out and maintain pursuant to the terms of the Building Contract;

(b) professional indemnity insurance in an amount of not less than [REDACTED] for any one occurrence or series of occurrences arising out of each and every event in relation to the Works, subject to the same remaining available to the Building Contractor upon commercially reasonable terms and at commercially reasonable rates (taking no account of the effect thereon of the Building Contractor's own claims record). Such insurance shall be with well established offices or underwriters of good repute who carry on business in the European Union. As and when it is reasonably required to do so by the City Council (but not more frequently than once a year) the Building Contractor shall produce for inspection documentary evidence to show that the insurance required is being maintained properly.

5.2 The Building Contractor warrants to the City Council that prior to the execution of this Deed it has made full disclosure to its insurers of the contents of this Deed.

5.3 The Building Contractor undertakes to inform the City Council immediately if such insurance ceases to be available at commercially reasonable rates and policy terms or otherwise is not maintained or renewed or for any reason becomes void or unenforceable. Any increased or additional premium required by insurers by reason of the Contractor's own claims, records, or other acts, omissions, matters or things shall be deemed to be within commercially reasonable rates.

- 5.4 Should the Building Contractor be in breach of any of its obligations under this clause 5 the City Council may itself insure against any risk with respect to which the breach shall have occurred and may recover from the Building Contractor a sum or sums equivalent to the amount paid or payable in respect of premiums together with any related costs reasonably incurred.

## **6. GUARANTEE**

- 6.1 The Guarantor has agreed to guarantee to the City Council the due and proper performance by the Building Contractor of each and every obligation of the Building Contractor arising under this Deed. Accordingly, the Guarantor:

6.1.1 agrees that if the Building Contractor shall in any respect fail to perform any of his obligations arising under this Deed or shall commit any breach of or fail to fulfil any warranty set out in this Deed, then the Guarantor shall forthwith upon the City Council's demand perform and fulfil in place of the Building Contractor each and every obligation or warranty in respect of which the Building Contractor has defaulted or as may be unfulfilled by the Building Contractor and (subject to the proviso to this clause 6) the Guarantor shall be liable to the City Council for any and all losses, damages, expenses, liabilities, claims, costs or proceedings which the Building Contractor is liable for pursuant to this Deed;

6.1.2 acknowledges and agrees that no variation or alteration to the terms of this Deed and no allowance of time, waiver, forbearance, forgiveness, compromise or other dealing under or with this Deed or any right or remedy arising under this Deed, shall in any way release, exonerate or discharge the Guarantor from any liability under the terms of this clause 6 or reduce, extinguish or otherwise adversely affect any such liability, and the Guarantor hereby waives notice to it of any such event;

6.1.3 confirms that it has full power and capacity to enter into this Deed and agrees that the terms of this clause 6 shall be additional to any other guarantee or security from time to time held by the City Council and shall not be affected by any release or waiver of any such guarantee or security and shall remain in full force and effect notwithstanding the

winding-up, liquidation, receivership, administration, voluntary arrangement or other composition with creditors (or any event analogous to any of them) of the Building Contractor; and

6.1.4 confirms that this Guarantee shall take effect as an absolute continuing guarantee of observance and performance of this Deed by the Building Contractor and any demand served in accordance with clause 6.1.1 shall be enforceable by the City Council upon twenty-eight (28) days' prior notice in writing being served upon or otherwise given to the Guarantor stating that the Building Contractor is in breach of its obligations under this Deed, that notice has been given to the Building Contractor of such breach and the nature of the breach and that the Building Contractor has failed to remedy the same as required.

Provided however that,

■ [REDACTED]

6.1.6 the Guarantor in order to fulfil its obligations hereunder shall have the right to appoint another contractor to fulfil the obligations of the Building Contractor, the identity of which shall be subject to the prior written consent of the City Council, which consent shall not be unreasonably withheld or delayed.

## 7. STEP IN RIGHTS

■ [REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

7.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the City Council to the Building Contractor, the Building Contractor will not be under any duty to obey any direction or instruction from the City Council unless and until the City Council has given notice under clause 7.1.1 or clause 7.3.



- 7.3 The Building Contractor further covenants with the City Council that, subject to clause 7.4, if the Agreement is terminated by the City Council, the Building Contractor will, if requested by the City Council by notice in writing served within twenty (20) Working Days of the date of such termination and subject to clause 7.1.2 and clause 7.1.3, accept the instructions of the City Council to the exclusion of the Contractor in respect of the Works upon the terms and conditions of the Building Contract (mutatis mutandis) and will if so requested in writing enter into a novation agreement (or a replacement building contract) whereby the City Council is substituted for the Contractor under the Building Contract (or is appointed on the same terms as the Building Contract), in each case mutatis mutandis.
- 7.4 Where the Building Contractor has given rights in relation to the Building Contract similar to those contained in this clause to the Senior Funders then if both the City Council and the Senior Funders serve notice under clause 7.1.1 or clause 7.3 or their equivalents the notice served by the Senior Funders will prevail over any notice served by the City Council.
- 7.5 The Contractor acknowledges that the Building Contractor will be entitled to rely on a notice given to the Building Contractor by the City Council under clause 7.3 as conclusive evidence that the Agreement has been terminated by the City Council.
- 7.6 The City Council may by notice in writing to the Building Contractor appoint another person to exercise its rights under this clause 7 subject to the City Council remaining liable to the Building Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 7.7 Upon request by the City Council the Building Contractor agrees to cooperate with the City Council in determining the duties performed or to be performed by the Building Contractor and to provide a copy of the Building Contract and any variations thereto and details of all monies paid and due under the Building Contract.



[Redacted]



[Redacted]

[REDACTED]

[REDACTED]

**9. CONCURRENCE OF CONTRACTOR**

The Contractor is a party to this Deed for the purpose of giving consent to the content hereof.

[REDACTED]

[REDACTED]

**11. INDEPENDENT ENQUIRY**

The liability of the Building Contractor under this Deed shall not be modified released, diminished or in any way affected by any independent inspection investigation or enquiry into any relevant matter which may be made or carried out by or for the City Council nor by any failure or omission to carry out any such inspection, investigation

or enquiry nor by the appointment by the City Council of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the City Council in respect of the Works nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the City Council provided always that nothing in this clause shall modify or affect any rights which the Building Contractor might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

## 12. NOTICES

12.1 Any notice to be given by any party hereunder should be served by facsimile transmission (with confirmed answer back) or in writing by letter either delivered by hand or sent by prepaid first class recorded delivery post.

12.2 Such notice is to be given or sent to the relevant party at the fax number or address below and should be marked for the attention of the person, if any, from time to time designated by such party to the other parties for the purposes of this Deed. The initial fax number, address and person (if any) so designated by each party are set out below:

### **The Contractor**

Address: [  ]

Fax No: [  ]

Attention: [  ]

### **The Building Contractor**

Address: Keepmoat, The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire DN4 5PL

Fax No: [  ]

Attention: [  ]

### **The City Council**

City Council: Leeds City Council

Address: [  ]

Fax No: [  ]

Attention: [  ]

**The Guarantor**

Address: Keepmoat, The Waterfront, Lakeside Boulevard, Doncaster, South  
Yorkshire DN4 5PL

Fax No: [  ]

Attention: [  ]

12.3 Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is received on a day other than a Working Day or after 5.00pm on any Working Day it will be deemed to be served on the next Working Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty-eight (48) hours after the time of posting if the end of that period falls before 5.00pm on a Working Day and otherwise on the next Working Day.

**13. THIRD PARTY RIGHTS**

Save where expressly provided nothing in this Deed will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the parties to this Deed.

**14. CITY COUNCIL'S REMEDIES**

The rights and benefits conferred upon the City Council by this Deed are in addition to any other rights and remedies it may have against the Building Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

**15. WAIVER**

Failure by any party to this Deed at any time to enforce any provision of this Deed or to require performance by the other party of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

**16. COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

**17. AMENDMENTS**

No amendment to this Deed shall be binding unless in writing and signed by the duly authorised representative of the parties.

**18. SEVERABILITY**

If any condition, clause or provision of this Deed not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Deed shall not be affected thereby.

**19. GOVERNING LAW**

This Deed shall be governed by the laws of England, and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the Courts of England.

**IN WITNESS** whereof the City Council, the Building Contractor, the Guarantor and the Contractor have executed and delivered this Deed on the date first above written

Executed as a Deed by affixing the Common Seal of Leeds City )  
Council in the presence of: )

Name .....

Signature .....

Job Title ..... (Public Private Partnerships Unit)

**EXECUTED as a DEED** )  
by **FRANK HASLAM MILAN & COMPANY** )  
**LIMITED** acting by )  
two of its directors or a director and its  
company secretary

Director .....

Director/Secretary .....

**EXECUTED as a DEED** )  
by **KEEPMOAT LIMITED** acting by )  
two of its directors or a director and its )  
company secretary

Director .....

Director/Secretary .....

**EXECUTED as a DEED**  
by **KEEPMOAT REGENERATION LIMITED**  
acting by  
two of its directors or a director and its  
company secretary

Director .....

Director/Secretary .....

**EXECUTED** as a **DEED** )  
by  acting by )  
two of its directors or a director and its )  
company secretary

Director .....

Director/Secretary .....

**Part 2 - Building Sub-Contractor and Professional Team Members**

**DATED**

**2013**

**(1) LEEDS CITY COUNCIL**

**- and -**

**(2) [BUILDING SUB CONTRACTOR/PROFESSIONAL TEAM]**

**- and -**

**(3) [GUARANTOR]**

**- and -**

**(4) [BUILDING CONTRACTOR]**

**BUILDING SUB-  
CONTRACTOR'S/PROFESSIONAL TEAM'S  
DEED OF COLLATERAL WARRANTY**  
relating to

Little London and Beeston Hill and Holbeck  
HRA Social Housing PFI Project



**BETWEEN**

- (1) **LEEDS CITY COUNCIL** of Civic Hall, Leeds LS1 1UR ("**City Council**"); and
- (2) **[SUB CONTRACTOR/PROFESSIONAL TEAM]** (Company Number [  ]) whose registered office is at [  ] ("**Sub Contractor**"); and
- (3) [  ] (Company Number [  ]) whose registered office is at [  ] ("**Guarantor**"); and
- (4) **FRANK HASLAM MILAN & COMPANY LIMITED** (Company Number 00629404) whose registered office is at Keepmoat, The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire DN4 5PL ("**Building Contractor**").

**BACKGROUND**

- A. The Contractor has entered into an Agreement under the United Kingdom Government's Private Finance Initiative with the City Council pursuant to which the Contractor will demolish and construct or refurbish the Properties and manage and maintain the Properties ("**Project**").
- B. The Building Contractor has entered into a Building Contract to demolish, construct [and/or refurbish certain Properties on behalf of the Contractor.
- C. The Building Contractor and the Sub-Contractor have entered into the Sub-Contract pursuant to which the Sub-Contractor will carry out [works/professional services] relevant to the Works ("**Relevant Works**").
- D. It is a condition of the Agreement and the Sub-Contract that the Sub-Contractor provides a warranty in this form ("**Deed**"), in favour of the City Council.
- E. The Guarantor is the parent company of the Sub-Contractor and agrees to guarantee to the City Council the due and proper performance by the Sub-Contractor of each and every obligation under this Deed and the Sub-Contract [Inclusion of Recital E subject to the Sub-Contractor having a parent company].
- F. The Sub-Contractor, the Building Contractor [and the Guarantor] have agreed to execute this Deed in favour of the City Council.

**THIS DEED WITNESSES** as follows:

## **1. DEFINITIONS & INTERPRETATION**

1.1 In this Deed, the following words or phrases have the following meanings:

**"Agreement"** means the agreement entered into on or around the date of this Deed (including its schedules and Appendices) between the Contractor and the City Council pursuant to which the Contractor will demolish and construct or refurbish the Properties and manage and maintain the Properties;

**"Building Contract"** means the agreement entered into on or around the date of this Deed between the Contractor and the Building Contractor pursuant to which Building Contractor will demolish, construct [and/or] refurbish the Properties;

**"Sub-Contract"** means the sub-contract entered into on or around the date of this Deed in the Agreed Form between the Building Contractor and the Sub Contractor/Professional Team relating to the Relevant Works.

1.2 The definitions given in the recitals apply to this Deed.

1.3 Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the meaning given to such term in the Agreement.

1.4 In this Deed, unless the context shall otherwise require or save as expressly defined or provided in this Deed, the following interpretations shall apply:

1.4.1 Number, gender etc

Wording importing:

1.4.1.1 one gender only shall be construed as importing any other gender; and

1.4.1.2 the singular shall be construed as importing the plural and vice versa; and

1.4.1.3 references to persons shall include corporations.

#### 1.4.2 Titles

The clause, sub-clause and (where provided) paragraph headings and captions in the body of this Deed do not form part of this Deed and shall not be taken into account in its construction or interpretation.

#### 1.4.3 Recitals

The parties agree that the recitals are true and correct and form part of this Deed.

## 2. WARRANTY

- 2.1 The Sub-Contractor warrants to the City Council that it has carried out and will continue to carry out all its obligations and duties under and in accordance with and to the standards required by the Sub-Contract and that it has exercised and will continue to exercise in carrying out the design of the Relevant Works the level of skill and care reasonably to be expected from an appropriately qualified and competent sub contractor in relation to a Project of similar size and scope to the Relevant Works save for any design in the Services for which the level of skill and care shall be that reasonably to be expected from an appropriately qualified and competent designer in relation to the Projects of similar size and scope to the Services.
- 2.2 The Sub-Contractor shall be entitled in any proceedings by the City Council in which the City Council claims any breach of clause 2.1 to rely on any limitation of liability in the Sub-Contract and to raise equivalent rights in defence of liability (excluding set-off and counterclaims) as it would have had against the Building Contractor under the Sub-Contract.
- 2.3 The parties agree that upon the expiry of 12 years from the date of completion of the Relevant Works in accordance with the Sub-Contract, the liability of the Sub-Contractor under this agreement shall cease and determine, save in relation to any claims made by the City Council against the Sub-Contractor and notified by the City Council to the Sub-Contractor in writing prior thereto.
- 2.4 The Sub-Contractor warrants that, to the extent in either it is obliged to specify or approve products or materials for use in the Relevant Works or

does so specify or approve, it has exercised and will continue to exercise reasonable skill, care and diligence in accordance with this Deed to ensure that it has not used and it will not use and it has not authorised or approved and it will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of specification are widely known to members of the Sub-Contractor's profession within the European Union to be deleterious to health and safety or to the durability 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.

- 2.5 If in the performance of its duties under the Sub-Contract the Sub-Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials specified in clause 2.4, the Sub-Contractor will notify the City Council in writing as soon as reasonably possible after it has become so aware. This clause does not create any additional duty for the Sub-Contractor to inspect or check the work of others which is not required by the Sub-Contract.

### 3. COPYRIGHT

- 3.1 In relation to all drawings, details, plans, specifications, reports, calculations and other documents of any nature whatsoever and any designs and inventions contained in them which have been or are hereafter provided by the Sub-Contractor in the course of carrying out and completing the Works ("**Documents**") the Sub-Contractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the City Council with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, an irrevocable royalty-free non-exclusive licence to use and to reproduce all Documents for any purpose whatsoever connected with the Project and such other purpose as may be reasonably necessary to enable the City Council to comply with any of its statutory duties. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

- 3.2 The City Council will not hold the Sub-Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it.
- 3.3 The Sub-Contractor warrants to the City Council that the Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in accordance with this clause 3 will not infringe the rights of any third party and (insofar as the Documents are not the Sub-Contractor's own original work) all royalties or other sums payable in respect of any copyright or the supply and use of any patented articles, processes or inventions required in connection with the Relevant Works shall be paid by the Sub-Contractor.
- 3.4 The Sub-Contractor shall indemnify the City Council from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the City Council by reason of the Sub-Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Sub-Contract.
- 3.5 The Sub-Contractor waives irrevocably any rights it may have under Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patents Act 1988 and any foreign corresponding rights and shall obtain a written waiver from its employees, contractors and agents from time to time of any rights they have in respect of the same.
- 3.6 The Sub-Contractor agrees upon the request at any time of the City Council to execute such documents and perform such acts as may be required fully and effectively to assure to the City Council the rights referred to in clause 3.

#### **4. ENQUIRIES AND INSPECTION**

The obligations of the Sub-Contractor under this Deed will not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the City Council or by the appointment of any person, firm or company by the City Council to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or company to the City Council arises in connection therewith. For the avoidance of doubt, nothing in this Deed shall oblige the City Council to make any such enquiry or undertake any such inspection.

## 5. PROFESSIONAL INDEMNITY INSURANCE

5.1 The Sub-Contractor warrants to the City Council that:

5.1.1 the Sub-Contractor shall without prejudice to its obligations under this Deed and/or at law and/or otherwise take out and maintain:

- (a) such insurance as the Sub-Contractor is required to take out and maintain pursuant to the terms of the Sub-Contract;
- (b) professional indemnity insurance in an amount of not less than [REDACTED] for any one occurrence or series of occurrences arising out of each and every event in relation to the Relevant Works, subject to the same remaining available to the Sub-Contractor upon commercially reasonable terms and at commercially reasonable rates (taking no account of the effect thereon of the Sub-Contractor's own claims record). Such insurance shall be with well established offices or underwriters of good repute who carry on business in the European Union. As and when it is reasonably required to do so by the City Council (but not more frequently than once a year) the Sub-Contractor shall produce for inspection documentary evidence to show that the insurance required is being maintained properly.

5.2 Any increased or additional premium required by insurers by reason of the Contractor's own claims, records, or other acts, omissions, matters or things shall be deemed to be within commercially reasonable rates.

5.3 The Sub-Contractor warrants to the City Council that prior to the execution of this Deed it has made full disclosure to its insurers of the contents of this Deed.

[REDACTED]

[REDACTED]

- 5.4 If the insurance referred to in clause 5.1 ceases to be available to the profession of the Sub-Contractor at commercially reasonable rates the Sub-Contractor shall:
- 5.4.1 give notice to the City Council immediately; and
  - 5.4.2 take out and maintain the highest level of insurance which is available to the profession of the Sub-Contractor at commercially reasonable rates and on commercially reasonable terms;
  - 5.4.3 or if no such insurance is available, the Sub-Contractor shall work with and co-operate with the City Council (and the parties acknowledge that the Building Contractor shall be consulted under the Appointment) to ascertain how the City Council's and the Building Contractor's (under the Appointment) interest can be best protected.
- 5.5 Should the Sub-Contractor be in breach of any of its obligations under this clause 5 the City Council may itself insure against any risk with respect to which the breach shall have occurred and may recover from the Sub-Contractor a sum or sums equivalent to the amount paid or payable in respect of premiums together with any related costs reasonably incurred.

## 6. GUARANTEE

- 6.1 ***[Inclusion of clause 6 subject to the Sub-Contractor having a parent company]*** The Guarantor has agreed to guarantee to the City Council the due and proper performance by the Sub-Contractor of each and every obligation of the Sub-Contractor arising under this Deed. Accordingly, the Guarantor:
- 6.1.1 agrees that if the Sub-Contractor shall in any respect fail to perform any of his obligations arising under this Deed or shall commit any breach of or fail to fulfil any warranty set out in this Deed, then the Guarantor shall forthwith upon the City Council's demand perform and fulfil in place of the Sub-Contractor each and every obligation or warranty in respect of which the Sub-Contractor has defaulted or as may be unfulfilled by the Sub-Contractor and (subject to the proviso to this clause 6) the Guarantor shall be liable to the City Council for any

and all losses, damages, expenses, liabilities, claims, costs or proceedings which the Sub-Contractor is liable for pursuant to this Deed;

- 6.1.2 acknowledges and agrees that no variation or alteration to the terms of this Deed and no allowance of time, waiver, forbearance, forgiveness, compromise or other dealing under or with this Deed or any right or remedy arising under this Deed, shall in any way release, exonerate or discharge the Guarantor from any liability under the terms of this clause 6 or reduce, extinguish or otherwise adversely affect any such liability, and the Guarantor hereby waives notice to it of any such event;
- 6.1.3 confirms that it has full power and capacity to enter into this Deed and agrees that the terms of this clause 6 shall be additional to any other guarantee or security from time to time held by the City Council and shall not be affected by any release or waiver of any such guarantee or security and shall remain in full force and effect notwithstanding the winding-up, liquidation, receivership, administration, voluntary arrangement or other composition with creditors (or any event analogous to any of them) of the Sub-Contractor; and
- 6.1.4 confirms that this Guarantee shall take effect as an absolute continuing guarantee of observance and performance of this Deed by the Sub-Contractor and any demand served in accordance with clause 6.1.1 shall be enforceable by the City Council upon twenty-eight (28) days' prior notice in writing being served upon or otherwise given to the Guarantor stating that the Sub-Contractor is in breach of its obligations under this Deed, that notice has been given to the Sub-Contractor of such breach and the nature of the breach and that the Sub-Contractor has failed to remedy the same as required.

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]



[REDACTED]

6.1.6 the Guarantor in order to fulfil its obligations hereunder shall have the right to appoint another contractor to fulfil the obligations of the Sub-Contractor, the identity of which shall be subject to the prior written consent of the City Council, which consent shall not be unreasonably withheld or delayed.

## **7. STEP IN RIGHTS**

7.1 The Sub-Contractor will not exercise or seek to exercise any right which may be, or become, available to it to terminate or treat as terminated or repudiate the Sub-Contract or its employment under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the City Council not less than twenty (20) Working Days prior written notice specifying the Sub-Contractor's ground for terminating or treating as terminated or repudiated the Sub-Contract or its employment under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Sub-Contract. Within such period of notice:

7.1.1 subject to clause 7.4, the City Council may give written notice to the Sub-Contractor that the City Council will thenceforth become the Building Contractor under the Sub-Contract to the exclusion of the Building Contractor and thereupon the Sub-Contractor will admit that the City Council is the Building Contractor and the Sub-Contract will be and remain in full force and effect notwithstanding any of the said grounds; and

7.1.2 if the City Council has given such notice as aforesaid or under clause 7.3 below, the City Council shall accept liability for the performance of the Building Contractor's obligations under the Sub-Contract and will as soon as practicable thereafter remedy any outstanding breach by the Building Contractor including, for the avoidance of doubt, any non-payment of sums due to the Sub-Contractor which properly has been included in the Sub-Contractor's specified grounds or has arisen after the date of service of the Sub-Contractor's notice pursuant to clause

- 7.1.1 (and which has been notified to the City Council) and which is capable of remedy; and
- 7.1.3 if the City Council has given such notice as aforesaid or under clause 7.3 below, the City Council will from the service of such notice become responsible for all sums properly payable to the Sub-Contractor under the Sub-Contract accruing after the service of the Sub-Contractor's notice but the City Council will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Building Contractor under the Sub-Contract.
- 7.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the City Council to the Sub-Contractor, the Sub-Contractor will not be under any duty to obey any direction or instruction from the City Council unless and until the City Council has given notice under clause 7.1.1 or clause 7.3.
- 7.3 The Sub-Contractor further covenants with the City Council that, subject to clause 7.4, if the Agreement is terminated by the City Council, the Sub-Contractor will, if requested by the City Council by notice in writing served within twenty (20) Working Days of the date of such termination and subject to clause 7.1.2 and clause 7.1.3, accept the instructions of the City Council to the exclusion of the Contractor in respect of the Works upon the terms and conditions of the Sub-Contract (*mutatis mutandis*) and will if so requested in writing enter into a novation agreement (or a replacement Sub-contract) whereby the City Council is substituted for the Building Contractor under the Sub-Contract (or is appointed on the same terms as the Sub-Contract), in each case *mutatis mutandis*.
- 7.4 Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this clause to any other party then if both the other party and the City Council serve notice under clause 7.1.1 or clause 7.3 or their equivalents the notice served by the City Council will not prevail over any notice served by the Contractor or the Senior Lender but will prevail over any notice served by any other party.
- 7.5 The Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the City Council under clause 7.3

as conclusive evidence that the Agreement has been terminated by the City Council.

7.6 The City Council may by notice in writing to the Sub-Contractor appoint another person to exercise its rights under this clause 7 subject to the City Council remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.

7.7 Upon request by the City Council the Sub-Contractor agrees to co-operate with the City Council in determining the duties performed or to be performed by the Sub-Contractor and to provide a copy of the Sub-Contract and any variations thereto and details of all monies paid and due under the Sub-Contract.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

**9. CONCURRENCE OF BUILDING CONTRACTOR**

The Building Contractor is a party to this Deed for the purpose of giving consent to the content hereof.

## **10. NO VARIATION TO SUB-CONTRACT WITHOUT CITY COUNCIL'S CONSENT**

The Building Contractor and the Sub-Contractor undertake with the City Council not to vary or depart from the terms and conditions of the Sub-Contract without the prior written consent of the City Council, and agree that no such variation or departure made without such consent shall be binding upon the City Council, or affect or prejudice the City Council's rights hereunder, or under the Sub-Contract or in any other way.

## **11. INDEPENDENT ENQUIRY**

The liability of the Sub-Contractor under this Deed shall not be modified released, diminished or in any way affected by any independent inspection investigation or enquiry into any relevant matter which may be made or carried out by or for the City Council nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the City Council of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the City Council in respect of the Relevant Works nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the City Council provided always that nothing in this clause shall modify or affect any rights which the Sub-Contractor might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

## **12. NOTICES**

12.1 Any notice to be given by any party hereunder should be served by facsimile transmission (with confirmed answer back) or in writing by letter either delivered by hand or sent by prepaid first class recorded delivery post.

12.2 Such notice is to be given or sent to the relevant party at the fax number or address below and should be marked for the attention of the person, if any, from time to time designated by such party to the other parties for the purposes of this Deed. The initial fax number, address and person (if any) so designated by each party are set out below:

**The Building Contractor**

Address: [  ]

Fax No: [  ]

Attention: [  ]

**The Sub-Contractor**

Address: [  ]

Fax No: [  ]

Attention: [  ]

**[Professional Team]**

Address: [  ]

Fax No: [  ]

Attention: [  ]

**The City Council**

City Council: Leeds City Council

Address: [  ]

Fax No: [  ]

Attention: [  ]

**The Guarantor**

Address: [  ]

Fax No: [  ]

Attention: [  ]

12.3 Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is received on a day other than a Working Day or after 5.00pm on any Working Day it will be deemed to be served on the next Working Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty-eight (48) hours after the time of posting if the end of that period falls before 5.00pm on a Working Day and otherwise on the next Working Day.

### **13. THIRD PARTY RIGHTS**

Save where expressly provided nothing in this Deed will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the parties to this Deed.

### **14. CITY COUNCIL'S REMEDIES**

The rights and benefits conferred upon the City Council by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

### **15. WAIVER**

Failure by any party to this Deed at any time to enforce any provision of this Deed or to require performance by the other party of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

### **16. COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

### **17. AMENDMENTS**

No amendment to this Deed shall be binding unless in writing and signed by the duly authorised representative of the parties.

**18. SEVERABILITY**

If any condition, clause or provision of this Deed not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Deed shall not be affected thereby.

**19. GOVERNING LAW**

This Deed shall be governed by the laws of England, and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the Courts of England.

**IN WITNESS** whereof the City Council, the Sub-Contractor, the Guarantor and the Building Contractor have executed and delivered this Deed on the date first above written

Executed as a Deed by affixing the Common Seal of Leeds City )  
Council in the presence of: )

Name .....

Signature .....

Job Title ..... (Public Private Partnerships Unit)

**EXECUTED as a DEED** )  
by [                     ] acting by )  
two of its directors or a director and its )  
company secretary

Director .....

Director/Secretary .....

**EXECUTED as a DEED** )  
by [                     ] acting by )  
two of its directors or a director and its )  
company secretary

Director .....

Director/Secretary .....

**EXECUTED as a DEED** )  
by [                     ] acting by )  
two of its directors or a director and its )  
company secretary

Director .....

Director/Secretary .....



**Part 3 - Responsive Repairs and Cyclical Maintenance and Renewal Contractor**

**DATED**

**2013**

**(1) LEEDS CITY COUNCIL**

**- and -**

**(2) FRANK HASLAM MILAN & COMPANY LIMITED**

**- and -**

**(3) KEEPMOAT LIMITED**

**- and -**

**(4) [CONTRACTOR]**

**RESPONSIVE REPAIRS AND CYCLICAL  
MAINTENANCE AND RENEWAL  
CONTRACTOR'S DEED OF  
COLLATERAL WARRANTY**  
relating to

Little London and Beeston Hill and Holbeck  
HRA Social Housing PFI Project

**BETWEEN**

- (1) **LEEDS CITY COUNCIL** of Civic Hall, Leeds LS1 1UR ("**City Council**"); and
- (2) **FRANK HASLAM MILAN & COMPANY LIMITED** (Company Number 00629404) whose registered office is at Keepmoat, The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire DN4 5PL ("**Services Contractor**"); and
- (3) **KEEPMOAT LIMITED** (Company Number 01998780) registered office is at Keepmoat, The Waterfront, Lakeside Boulevard, Doncaster, South Yorkshire DN4 5PL ("**Guarantor**"); and
- (4)  (Company Number  ) whose registered office is at  ("**Contractor**").

**BACKGROUND**

- A. The Contractor has entered into an Agreement under the United Kingdom Government's Private Finance Initiative with the City Council pursuant to which the Contractor will demolish and construct or refurbish the Properties and manage and maintain the Properties ("**Project**").
- B. The Contractor and the Services Contractor have entered into the Services Contract pursuant to which the Services Contractor will carry out the Services.
- C. It is a condition of the Agreement and the Services Contract that the Services Contractor provides a warranty in this form ("**Deed**"), in favour of the City Council.
- D. The Guarantor is the parent company of the Services Contractor and agrees to guarantee to the City Council the due and proper performance by the Services Contractor of each and every obligation under this Deed and the Services Contract.
- E. The Services Contractor, the Contractor and the Guarantor have agreed to execute this Deed in favour of the City Council.

**THIS DEED WITNESSES** as follows:

**1. DEFINITIONS & INTERPRETATION**

1.1 In this Deed, the following words or phrases have the following meanings:

**"Agreement"** means the agreement entered into on or around the date of this Deed (including its schedules and Appendices) between the Contractor and the City Council pursuant to which the Contractor will demolish and construct or refurbish the Properties and manage and maintain the Properties; and

**"Services Contract"** means the Responsive Repairs and Cyclical Maintenance and Renewal Contract entered into on and around the date of this Deed in the Agreed Form between the Contractor and the Services Contractor relating to the Services.

1.2 The definitions given in the recitals apply to this Deed.

1.3 Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the meaning given to such term in the Agreement.

1.4 In this Deed, unless the context shall otherwise require or save as expressly defined or provided in this Deed, the following interpretations shall apply:

1.4.1 Number, gender etc

Wording importing:

1.4.1.1 one gender only shall be construed as importing any other gender; and

1.4.1.2 the singular shall be construed as importing the plural and vice versa; and

1.4.1.3 references to persons shall include corporations.

#### 1.4.2 Titles

The clause, sub-clause and (where provided) paragraph headings and captions in the body of this Deed do not form part of this Deed and shall not be taken into account in its construction or interpretation.

#### 1.4.3 Recitals

The parties agree that the recitals are true and correct and form part of this Deed.

## **2. WARRANTY**

- 2.1 The Services Contractor warrants to the City Council that it has carried out and will continue to carry out all its obligations and duties under and in accordance with and to the standards required by the Services Contract and that it has exercised and will continue to exercise in carrying out the Services the level of skill and care reasonably to be expected from an appropriately qualified designer in relation to a project of similar size and scope to the Services.
- 2.2 The Services Contractor shall be entitled in any proceedings by the City Council in which the City Council claims any breach of clause 2.1 to rely on any limitation of liability in the Services Contract and to raise equivalent rights in defence of liability (excluding set-off and counterclaims) as it would have had against the Contractor under the Services Contract.
- 2.3 The Services Contractor warrants that, to the extent in either it is obliged to specify or approve products or materials for use in the Works or does so specify or approve, it has exercised and will continue to exercise reasonable skill, care and diligence in accordance with this Deed to ensure that it has not used and it will not use and it has not authorised or approved and it will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of specification are widely known to members of the Services Contractor's profession within the European Union to be deleterious to health and safety or to the durability 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.

- 2.4 If in the performance of its duties under the Services Contract the Services Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials specified in clause 2.3, the Services Contractor will notify the City Council in writing as soon as reasonably possible after it has become so aware. This clause does not create any additional duty for the Services Contractor to inspect or check the work of others which is not required by the Services Contract.
- 2.5 The rights and obligations of the parties under this Deed (other than those contained in clause 3, 5, 7 and 8) shall not be enforceable unless and until the Agreement has been terminated. The parties agree that upon the Expiry Date in accordance with the Agreement the liability of the Services Contractor under this Deed shall cease and determine, except for claims subsisting as at the Expiry Date of the Agreement.

### 3. COPYRIGHT

- 3.1 In relation to all drawings, details, plans, specifications, reports, calculations and other documents of any nature whatsoever and any designs and inventions contained in them which have been or are hereafter provided by the Services Contractor in the course of carrying out and completing the Services ("**Documents**") the Services Contractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the City Council with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, an irrevocable royalty-free non-exclusive licence to use and to reproduce all Documents for any purpose whatsoever connected with the Project and such other purpose as may be reasonably necessary to enable the City Council to comply with any of its statutory duties. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 3.2 The City Council will not hold the Services Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it.

- 3.3 The Services Contractor warrants to the City Council that the Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in accordance with this clause 3 will not infringe the rights of any third party and (insofar as the Documents are not the Services Contractor's own original work) all royalties or other sums payable in respect of any copyright or the supply and use of any patented articles, processes or inventions required in connection with the Services shall be paid by the Services Contractor.
- 3.4 The Services Contractor shall indemnify the City Council from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the City Council by reason of the Services Contractor infringing or being held to infringe any intellectual property rights in the course of or in connection with the Services Contract.
- 3.5 The Services Contractor waives irrevocably any rights it may have under Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patents Act 1988 and any foreign corresponding rights and shall obtain a written waiver from its employees, contractors and agents from time to time of any rights they have in respect of the same.
- 3.6 The Services Contractor agrees upon the request at any time of the City Council to execute such documents and perform such acts as may be required fully and effectively to assure to the City Council the rights referred to in clause 3.

#### **4. ENQUIRIES AND INSPECTION**

The obligations of the Services Contractor under this Deed will not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the City Council or by the appointment of any person, firm or company by the City Council to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or company to the City Council arises in connection therewith. For the avoidance of doubt, nothing in this Deed shall oblige the City Council to make any such enquiry or undertake any such inspection.

## 5. PROFESSIONAL INDEMNITY INSURANCE

5.1 The Services Contractor warrants to the City Council that:

5.1.1 the Services Contractor shall without prejudice to its obligations under this Deed and/or at law and/or otherwise take out and maintain:

(a) such insurance as the Services Contractor is required to take out and maintain pursuant to the terms of the Services Contract;

(b) professional indemnity insurance in an amount of not less [REDACTED] [REDACTED] for any one occurrence or series of occurrences arising out of each and every event in relation to the Services, subject to the same remaining available to the Services Contractor upon commercially reasonable terms and at commercially reasonable rates (taking no account of the effect thereon of the Services Contractor's own claims record). Such insurance shall be with well established offices or underwriters of good repute who carry on business in the European Union. As and when it is reasonably required to do so by the City Council (but not more frequently than once a year) the Services Contractor shall produce for inspection documentary evidence to show that the insurance required is being maintained properly.

5.2 The Services Contractor warrants to the City Council that prior to the execution of this Deed it has made full disclosure to its insurers of the contents of this Deed.

5.3 The Services Contractor undertakes to inform the City Council immediately if such insurance ceases to be available at commercially reasonable rates and policy terms or otherwise is not maintained or renewed or for any reason becomes void or unenforceable. Any increased or additional premium required by insurers by reason of the Services Contractor's own claims, records, or other acts, omissions, matters or things shall be deemed to be within commercially reasonable rates.

5.4 Should the Services Contractor be in breach of any of its obligations under this clause 5 the City Council may itself insure against any risk with respect to which the breach shall have occurred and may recover from the Services Contractor a sum or sums equivalent to the amount paid or payable in respect of premiums together with any related costs reasonably incurred.

## **6. GUARANTEE**

6.1 The Guarantor has agreed to guarantee to the City Council the due and proper performance by the Services Contractor of each and every obligation of the Services Contractor arising under this Deed. Accordingly, the Guarantor:

6.1.1 agrees that if the Services Contractor shall in any respect fail to perform any of his obligations arising under this Deed or shall commit any breach of or fail to fulfil any warranty set out in this Deed, then the Guarantor shall forthwith upon the City Council's demand perform and fulfil in place of the Services Contractor each and every obligation or warranty in respect of which the Services Contractor has defaulted or as may be unfulfilled by the Services Contractor and (subject to the proviso to this clause 6) the Guarantor shall be liable to the City Council for any and all losses, damages, expenses, liabilities, claims, costs or proceedings which the Services Contractor is liable for pursuant to this Deed;

6.1.2 acknowledges and agrees that no variation or alteration to the terms of this Deed and no allowance of time, waiver, forbearance, forgiveness, compromise or other dealing under or with this Deed or any right or remedy arising under this Deed, shall in any way release, exonerate or discharge the Guarantor from any liability under the terms of this clause 6 or reduce, extinguish or otherwise adversely affect any such liability, and the Guarantor hereby waives notice to it of any such event;

6.1.3 confirms that it has full power and capacity to enter into this Deed and agrees that the terms of this clause 6 shall be additional to any other guarantee or security from time to time held by the City Council and shall not be affected by any release or waiver of any such guarantee



or security and shall remain in full force and effect notwithstanding the winding-up, liquidation, receivership, administration, voluntary arrangement or other composition with creditors (or any event analogous to any of them) of the Services Contractor; and

6.1.4 confirms that this Guarantee shall take effect as an absolute continuing guarantee of observance and performance of this Deed by the Services Contractor and any demand served in accordance with clause 6.1.1 shall be enforceable by the City Council upon twenty-eight (28) days' prior notice in writing being served upon or otherwise given to the Guarantor stating that the Services Contractor is in breach of its obligations under this Deed, that notice has been given to the Services Contractor of such breach and the nature of the breach and that the Services Contractor has failed to remedy the same as required.

Provided however that:

[REDACTED]

6.1.6 the Guarantor in order to fulfil its obligations hereunder shall have the right to appoint another contractor to fulfil the obligations of the Services Contractor, the identity of which shall be subject to the prior written consent of the City Council, which consent shall not be unreasonably withheld or delayed.

## **7. STEP IN RIGHTS**

7.1 The Services Contractor will not exercise or seek to exercise any right which may be, or become, available to it to terminate or treat as terminated or repudiate the Services Contract or its employment under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the City Council not less than twenty (20) Working Days prior written notice specifying the Services Contractor's ground for terminating or treating

as terminated or repudiated the Services Contract or its employment under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Services Contract. Within such period of notice:

- 7.1.1 subject to clause 7.4, the City Council may give written notice to the Services Contractor that the City Council will thenceforth become the Contractor under the Services Contract to the exclusion of the Contractor and thereupon the Services Contractor will admit that the City Council is the Contractor and the Services Contract will be and remain in full force and effect notwithstanding any of the said grounds; and
  - 7.1.2 if the City Council has given such notice as aforesaid or under clause 7.3 below, the City Council shall accept liability for the performance of the Contractor's obligations under the Services Contract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor including, for the avoidance of doubt, any non-payment of sums due to the Services Contractor which properly has been included in the Services Contractor's specified grounds or has arisen after the date of service of the Services Contractor's notice pursuant to clause 7.1.1 (and which has been notified to the City Council) and which is capable of remedy; and
  - 7.1.3 if the City Council has given such notice as aforesaid or under clause 7.3 below, the City Council will from the service of such notice become responsible for all sums properly payable to the Services Contractor under the Services Contract accruing after the service of the Services Contractor's notice but the City Council will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Services Contract.
- 7.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the City Council to the Services Contractor, the Services Contractor will not be under any duty to obey any direction or instruction from the City Council unless and until the City Council has given notice under clause 7.1.1 or clause 7.3.

- 7.3 The Services Contractor further covenants with the City Council that, subject to clause 7.4, if the Agreement is terminated by the City Council, the Services Contractor will, if requested by the City Council by notice in writing served within twenty (20) Working Days of the date of such termination and subject to clause 7.1.2 and clause 7.1.3, accept the instructions of the City Council to the exclusion of the Contractor in respect of the Services upon the terms and conditions of the Services Contract (mutatis mutandis) and will if so requested in writing enter into a novation agreement (or a replacement Services Contract) whereby the City Council is substituted for the Contractor under the Services Contract (or is appointed on the same terms as the Services Contractor), in each case mutatis mutandis.
- 7.4 Where the Services Contractor has given rights in relation to the Services Contract similar to those contained in this clause to the Senior Funders then if both the City Council and the Senior Funders serve notice under clause 7.1.1 or clause 7.3 or their equivalents the notice served by the Senior Funders will prevail over any notice served by the City Council.
- 7.5 The Contractor acknowledges that the Services Contractor will be entitled to rely on a notice given to the Services Contractor by the City Council under clause 7.3 as conclusive evidence that the Agreement has been terminated by the City Council.
- 7.6 The City Council may by notice in writing to the Services Contractor appoint another person to exercise its rights under this clause 7 subject to the City Council remaining liable to the Services Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 7.7 Upon request by the City Council the Services Contractor agrees to cooperate with the City Council in determining the duties performed or to be performed by the Services Contractor and to provide a copy of the Services Contract and any variations thereto and details of all monies paid and due under the Services Contract.

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**9. CONCURRENCE OF CONTRACTOR**

The Contractor is a party to this Deed for the purpose of giving consent to the content hereof.

[REDACTED]

[REDACTED]

**11. INDEPENDENT ENQUIRY**

The liability of the Services Contractor under this Deed shall not be modified released, diminished or in any way affected by any independent inspection investigation or enquiry into any relevant matter which may be made or carried out by

or for the City Council nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the City Council of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the City Council in respect of the Services nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the City Council provided always that nothing in this clause shall modify or affect any rights which the Services Contractor might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

## 12. NOTICES

- 12.1 Any notice to be given by any party hereunder should be served by facsimile transmission (with confirmed answer back) or in writing by letter either delivered by hand or sent by prepaid first class recorded delivery post.
- 12.2 Such notice is to be given or sent to the relevant party at the fax number or address below and should be marked for the attention of the person, if any, from time to time designated by such party to the other parties for the purposes of this Deed. The initial fax number, address and person (if any) so designated by each party are set out below:

### **The Contractor**

Address: [  ]

Fax No: [  ]

Attention: [  ]

### **The Services Contractor**

Address: Keepmoat, The Waterfront, Lakeside Boulevard, Doncaster,  
South Yorkshire DN4 5PL

Fax No: [  ]

Attention: [  ]

### **The City Council**

City Council: Leeds City Council

Address: [  ]

Fax No: [  ]

Attention: [  ]

**The Guarantor**

Address: Keepmoat, The Waterfront, Lakeside Boulevard, Doncaster,  
South Yorkshire DN4 5PL

Fax No: [  ]

Attention: [  ]

- 12.3 Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is received on a day other than a Working Day or after 5.00pm on any Working Day it will be deemed to be served on the next Working Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty-eight (48) hours after the time of posting if the end of that period falls before 5.00pm on a Working Day and otherwise on the next Working Day.

**13. THIRD PARTY RIGHTS**

Save where expressly provided nothing in this Deed will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the parties to this Deed.

**14. CITY COUNCIL'S REMEDIES**

The rights and benefits conferred upon the City Council by this Deed are in addition to any other rights and remedies it may have against the Services Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

**15. WAIVER**

Failure by any party to this Deed at any time to enforce any provision of this Deed or to require performance by the other party of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

**16. COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

**17. AMENDMENTS**

No amendment to this Deed shall be binding unless in writing and signed by the duly authorised representative of the parties.

**18. SEVERABILITY**

If any condition, clause or provision of this Deed not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Deed shall not be affected thereby.

**19. GOVERNING LAW**

This Deed shall be governed by the laws of England, and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the Courts of England.

**IN WITNESS** whereof the City Council, the Services Contractor, the Guarantor and the Contractor have executed and delivered this Deed on the date first above written

Executed as a Deed by affixing the Common Seal of Leeds City )  
Council in the presence of: )

Name .....

Signature .....

Job Title ..... (Public Private Partnerships Unit)

**EXECUTED as a DEED** )  
by **FRANK HASLAM MILAN & COMPANY** )  
**LIMITED** acting by )  
two of its directors or a director and its  
company secretary

Director .....

Director/Secretary .....

**EXECUTED as a DEED** )  
by **KEEPMOAT LIMITED** acting by )  
two of its directors or a director and its )  
company secretary

Director .....

Director/Secretary .....

**EXECUTED as a DEED** )  
by [  ] acting by )  
two of its directors or a director and its )  
company secretary



Director .....

Director/Secretary .....

## SCHEDULE 7

### Review Procedure

#### 1. REVIEW PROCEDURE

- 1.1 The provisions of this schedule 7 (*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:
- 1.2.1 a copy of the proposed document to be reviewed or a statement of the proposed course of action; and
- 1.2.2 a submitted item tracking sheet in a form similar to that set out in appendix 3 to this schedule ("**Submitted Item Tracking Sheet**") completed with the information required in Section 1 of such Submitted Item Tracking Sheet,
- (the entire contents of a submission being referred to in this schedule 7 (*Review Procedure*) as a "**Submitted Item**").
- 1.3 The Contractor shall submit each item of Reviewable Design Data in accordance with the Reviewable Design Data Programme. The Contractor shall agree any required amendment to the Reviewable Design Data Programme with the City Council, such amendment only to be effective upon written consent from the City Council.
- 1.4 Notwithstanding paragraph 1.3, the Reviewable Design Data set out in appendix 1 to this schedule 7 (*Review Procedure*) shall require submission in respect of each Property Type save where the Contractors Proposals identify Sites which cannot accommodate the standard design for that Property as set out in the Reviewable Design Data submission, in which case an additional submission shall be made by the Contractor in respect of each such non-standard design.

- 1.5 Where the Contractor fails to submit any item of Reviewable Design Data in accordance with paragraph 1.3 above then it will pay the City Council's reasonable additional costs incurred in reviewing and responding to such Submitted Item in accordance with this Review Procedure.
- 1.6 No review, comment or approval by the City Council shall operate to exclude or limit the Contractor's obligations or liabilities under this Agreement (or the City Council's rights under the Agreement).
- 1.7 If at any point the Contractor chooses to proceed with further design or construction notwithstanding the comments or objections raised by the City Council's Representative or any request for additional information under this Review Procedure, and it is subsequently determined or agreed that the Contractor was not entitled to undertake such work, the Contractor shall, at the request of the City Council and at the Contractor's own cost, remove from the Site(s) and replace those parts of the works which the Contractor was not entitled to undertake.
- 1.8 Notwithstanding clause 71 (Notices), any submission pursuant to this Review Procedure may be submitted by e-mail, provided that such submission shall only be deemed effective following confirmation of receipt (either orally or by e-mail response to such electronic submission). Submission by hand, post or facsimile shall be deemed effective in accordance with clause 71 (Notices).
- 1.9 In relation to each Submitted Item, the following procedure in this schedule 7 (*Review Procedure*) shall apply.

## **2. CITY COUNCIL RESPONSE TO SUBMITTED ITEMS**

- 2.1 Following the submission (or re-submission, as the case may be) of any of the following Submitted Items:
  - 2.1.1 a revised Works Delivery Plan;
  - 2.1.2 a revised Construction Programme;
  - 2.1.3 any Reviewable Design Data,

to the City Council's Representative, the City Council's Representative shall return one copy of the relevant Submitted Item to the Contractor with an endorsement "**no comment**" or (subject to and in accordance with paragraph 6) "**objections**" or "**comments**" as appropriate set out in section 2 of the Submitted Item Tracking Sheet. The City Council's Representative shall, subject to paragraph 2.3, return such copy:

- (a) in the case of an initial submission, within ten (10) Working Days (or such other period as the parties may agree) of the date of submission;  
or
- (b) in the case of resubmission, within five (5) Working Days (or such other period as the parties may agree) of the date of the resubmission.

2.2 Following the submission (or re-submission, as the case may be) of any other Submitted Item to the City Council's Representative the City Council's Representative shall return one copy of the relevant Submitted Item to the Contractor with an endorsement of "**no comment**" or (subject to and in accordance with paragraph 6) "**objections**" or "**comments**" as appropriate set out in section 2 of the Submitted Item Tracking Sheet. The City Council's Representative shall, subject to paragraph 2.3, return such copy as soon as reasonably possible but in any event:

- (a) in the case of an initial submission, within ten (10) Working Days (or such other period as the parties may agree) of the date of submission;  
or
- (b) in the case of a resubmission, within five (5) Working Days (or such other period as the parties may agree) of the date of the resubmission.

2.3 The City Council shall not be bound by the time periods set out in paragraphs 2.1 or 2.2 if the Reviewable Design Data Programme applies to the relevant Submitted Item, and it has not been submitted in accordance with the Reviewable Design Data Programme. In such circumstances the City Council shall return a copy of the Submitted Item to the Contractor appropriately endorsed as soon as reasonably practicable taking account of the resources available to the City Council at the relevant time.

### **3. NO COMMENT**

If the City Council's Representative fails to return a copy of any Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with paragraph 2.1 or 2.2, within the time periods referred to in those paragraphs (subject always to paragraph 2.3), then the City Council's Representative shall be deemed to have returned the Submitted Item to the Contractor endorsed "**no comment**".

### **4. INAPPROPRIATE GROUNDS FOR OBJECTION**

4.1 If the City Council's Representative makes objections on any Submitted Item in accordance with this Review Procedure 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 City Council's Representative objects to a Submitted Item other than on the basis set out in paragraph 6, or fails to comply with the provisions of this paragraph 4, the Contractor may, in its discretion, either:

4.1.1 request written clarification of the basis for such comments and, if clarification is not received within five (5) Working Days of such request by the Contractor, refer the matter for determination in accordance with the Dispute Resolution Procedure; or

4.1.2 proceed disregarding such comments.

### **5. PROVISION OF FURTHER INFORMATION TO CITY COUNCIL**

The Contractor shall submit any further or other information, data and documents that the City Council's Representative may reasonably require within the appropriate period set out in paragraph 2.1 or 2.2 as the case may be, in order to determine whether he has a basis for raising comments or making objections to any Submitted Item in accordance with this Review Procedure. The Contractor shall submit such information with a copy of the Submitted Item Tracking Sheet for such Submitted Item with section 3 fully completed, detailing the additional information provided, and the time period for the City Council to respond to such Submitted Item (pursuant to paragraph 2.1 or 2.2) shall recommence from the date of such submission of additional information. If the Contractor does not submit any such information, data and documents, the City Council's Representative shall be entitled to:

- 5.1 raise comments or make objections on the Submitted Item in accordance with paragraph 6 on the basis of the information, data and documents which have been provided; or
- 5.2 make objections to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the City Council's Representative to determine whether he has a legitimate basis for commenting or objecting in accordance with paragraph 6.

## **6. GROUNDS FOR OBJECTIONS**

Subject to paragraph 5 the City Council may raise objections in relation to any Submitted Item only in accordance with the grounds in this paragraph 6, but in any event may comment on any Submitted Item.

### **6.1 Grounds for objection to any Submitted Item**

The City Council may raise objections in relation to any Submitted Item on the grounds that:

- 6.1.1 implementation of the Submitted Items would breach any Legislation or not be in accordance with any Consent;
- 6.1.2 implementation of the Submitted Item would (on the balance of probabilities) adversely effect the Contractor's performance of its obligations under this Agreement; or
- 6.1.3 implementation of the Submitted Item would adversely effect any right of the City Council under the Agreement or its ability to enforce any such right;
- 6.1.4 implementation of the Submitted Item would increase the City Council's liabilities during the Contract Period or upon termination;
- 6.1.5 implementation of the Submitted Item would be likely (on the balance of probabilities) to increase the level of rent or service charge chargeable in respect of any Dwelling, or the cost of utilities provision to such Dwelling, or the cost of insuring such Dwelling; and/or
- 6.1.6 the Submitted Item is inconsistent with the Contractors Proposals.

## **6.2 Objections to revisions to Project Documents**

Subject to clause 3 (*Commencement and Duration*), the City Council may raise objections in relation to any Submitted Item which comprises a revised Project Document on the grounds that:

- 6.2.1 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 City Council's contractual liabilities (whether actual, potential or contingent);
- 6.2.2 the proposed revision would adversely affect the City Council's performance of its obligations under this Agreement;
- 6.2.3 the proposed revision would (on the balance of probabilities) significantly reduce the direct or indirect liabilities of a Key Sub-Contractor to the Contractor;
- 6.2.4 the proposed course of action would reduce any cap on any indemnity in any Sub-Contract.

## **6.3 Objections to Delivery Plans, Programmes and Reviewable Design Data**

The City Council may raise objections in relation to any Submitted Item which comprises a revised Works Delivery Plan, Service Delivery Plan, Cyclical Maintenance and Replacement Programme and Planned Maintenance Programme or Reviewable Design Data on the grounds that:

- 6.3.1 the proposed revision is not in accordance with Good Industry Practice;
- 6.3.2 the performance of the relevant Works or Service in accordance with the proposed revision would (on the balance of probabilities):
  - 6.3.2.1 mean that compliance with relevant parts of the Output Specification will not occur;
  - 6.3.2.2 not (on the balance of probabilities) enable the Works to be completed by the Planned Services Commencement Dates;

- 6.3.2.3 cause the City Council to incur material additional cost or expense;
- 6.3.2.4 not pay due and reasonable regard to the needs of Tenants in a frail or vulnerable condition;
- 6.3.2.5 materially increase disruption to or have an adverse effect on the health and safety of Tenants;
- 6.3.2.6 result in an inferior quality of components within the Works;
- 6.3.2.7 result in the period for carrying out any Works being extended beyond the period reasonably required for those Works;
- 6.3.2.8 the proposed revision would (on the balance of probabilities) cause the costs of the Contractor or any of its Sub-Contractors to materially decrease, save that this paragraph 6.3.2.8 shall not apply to any proposed revision to the Cyclical Maintenance and Replacement Programme, where:
  - 6.3.2.8.1 following such revision the Contractor will continue to meet the Output Specification in respect of any Dwellings or other Properties affected by such revision;
  - 6.3.2.8.2 the quality of works will not be adversely affected by such revision; and
  - 6.3.2.8.3 the condition of the Dwellings will not be materially different from that which the City Council could have reasonably anticipated as at the date of this Agreement, in light of the Planned Maintenance Programme and the Contractor's Proposals and the general condition of all of the Dwellings reasonably anticipated as at the Expiry Date,



such objection shall not prohibit the Contractor from requesting the same or a similar amendment as a Contractor Change.

### **6.3A Further grounds for the City Council to comment in relation to the Construction Programme**

6.3A.1 Notwithstanding paragraph 6.3 of this Review Procedure, if:

- (a) the Contractor at any time wishes to amend the Construction Programme; and
- (b) the relevant date for the purpose of clause 6.10.2 (Stopping-Up orders) would as a result be earlier than the relevant date for the purpose of that clause in the Construction Programme at the date this Agreement,

the City Council may notify the Contractor that the City Council does not approve of such amendment to the Construction Programme.

6.3A.2 If the City Council notifies the Contractor in accordance with paragraph 6.3A.1 of this Review Procedure, the Contractor may either elect to withdraw its proposed amendment to the Construction Programme, or proceed with the amendment to the Construction Programme, at the Contractor's own risk.

6.3A.3 If the Contractor elects to proceed with the amendment to the Construction Programme at the Contractor's own risk, the Contractor agrees that the Contractor will not be entitled to a Change pursuant to clause 6.10, until the relevant date set out in the Construction Programme for the purposes of clause 6.10 as at the date of this Agreement.

6.3A.4 The Contractor agrees that nothing in this paragraph 6.3A shall be interpreted to limit the City Council's grounds of objection set out in paragraph 6.3 of this Review Procedure.

## 7. EFFECT OF REVIEW

- 7.1 Any Submitted Item which is returned or deemed to have been returned by the City Council's Representative endorsed "**no comment**" may be implemented by the Contractor in accordance with its terms.
- 7.2 In the case of any Submitted Item, if the City Council's Representative returns the Submitted Item to the Contractor with an endorsement of "**objections**" on the Submitted Item Tracking Sheet, the Contractor shall:
- 7.2.1 return a copy of the Submitted Item to the City Council's Representative, as soon as reasonably practicable, amended in accordance with the objections, with a Submitted Item Tracking Sheet setting out the amendments at section 4; and
- 7.2.2 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 City Council may refer the matter for determination under the Dispute Resolution Procedure.
- 7.3 In the case of any Submitted Item, if the City Council's Representative returns the Submitted Item to the Contractor endorsed "**comments**", the Contractor shall give due and proper consideration to those comments and shall return a copy of the Submitted Item to the City Council's Representative, as soon as reasonably practicable, with a Submitted Item Tracking Sheet setting out any amendments made to reflect the comments at section 4, or confirming that no amendments have been made.
- 7.4 If the City Council's Representative returns a re-submitted Submitted Item to the Contractor pursuant to paragraphs 2.1 and 2.2 endorsed "**comments**" or "**objections**", without prejudice to the rights of the Contractor under paragraph 4.1.2, the Contractor may proceed at its own risk, disregarding such "comments" or "objections". If the Contractor does proceed at risk and it is subsequently agreed or determined under the Dispute Resolution Procedure that the Contractor should not have proceeded, then the

Contractor shall as soon as is reasonably practicable at its own cost, undo that which it is agreed or determined the Contractor was not entitled to do.

## **8. DOCUMENTATION MANAGEMENT**

- 8.1 The Contractor shall compile and maintain a register of the date and contents of the submission of all Submitted Items.
- 8.2 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 City Council's Representative.
- 8.3 The Contractor shall in accordance with paragraph 3.7 (Contract Management) of Volume 1 of the Output Specification provide to the City Council on a monthly basis an up to date register as compiled and maintained pursuant to paragraphs 8.1 and 8.2.

## **9. VARIATIONS**

- 9.1 No approval or comment or any failure to give or make an approval or comment under this schedule 7 (*Review Procedure*) shall constitute a City Council Change save to the extent provided in paragraph 9.2.
- 9.2 If, having received comments from the City Council's Representative, the Contractor considers that compliance with those comments would amount to a City Council Change, the Contractor shall notify the City Council of the same and, if it is agreed by the parties or determined pursuant to the Dispute Resolution Procedure that a City Council Change would arise if the comments were complied with, the City Council may, if it wishes, implement the City Council Change and it shall be dealt with in accordance with the Change Protocol.
- 9.3 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 City Council Change.

## APPENDIX 1

### Reviewable Design Data

Ref	REVIEWABLE DESIGN DATA	REVIEWED PRIOR TO FINANCIAL CLOSE	DRAWING NUMBER OR REFERENCE
<b>New Build Sites</b>			
	Malvern Road	✓	
	Folly Lane	✓	
	Coupland Place	✓	
	Coupland Road	✓	
	Holbeck Towers	Information as defined below within sections 1.0 to 4.4 to be provided in line with Appendix 2.	
	Bismarck Drive	Information as defined below within sections 1.0 to 4.4 to be provided in line with Appendix 2.	
	Bismarck Street	Information as defined below within sections 1.0 to 4.4 to be provided in line with Appendix 2.	
	Fairfax Road	Information as defined below within sections 1.0 to 4.4 to be provided in line with Appendix 2.	
	St Lukes Green	Information as defined below within sections 1.0 to 4.4 to be provided in line with Appendix 2.	
<b>1.0</b>	<b>Architectural</b>		
1.1	<p>Internal room layout plans for each Area within each Property Type (as identified within each scheme accommodation schedule) including sectional elevations.</p> <p>To show fitments, indicative furniture layouts, equipment, mechanical and electrical engineering services (including CCTV) and finishes (where appropriate).</p>	<p>Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.</p>	<ul style="list-style-type: none"> <li>● House type floor plans at 1:50</li> <li>● Kitchen and bathroom plans at 1:50</li> <li>● House type sections at 1:20</li> <li>● Block floor plans and elevations at 1:100</li> <li>● Block sections at 1:50</li> <li>● Room data sheets – Dwellings and Communal</li> </ul>

Ref	REVIEWABLE DESIGN DATA	REVIEWED PRIOR TO FINANCIAL CLOSE	DRAWING NUMBER OR REFERENCE
			Areas/Facilities
1.2	Architectural materials and specification for each Property Type.	Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.	<ul style="list-style-type: none"> <li>• New build specification</li> <li>• Elevation treatment schedule to include roof, walls, canopy, windows, doors and boundary treatments</li> </ul>
1.3	Architectural finishes schedule for each Property Type	Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.	<ul style="list-style-type: none"> <li>• Internal finishes schedule to include kitchen units, finishes to ceilings, walls and floors</li> </ul>
1.4	Communal entrance area details for each Property Type.	No; schedule to be provided post Building Regulation Stage.	<ul style="list-style-type: none"> <li>• Internal finishes schedule to include kitchen units, finishes to ceilings, walls and floors</li> </ul>
1.5	Door & Window schedules. To include door & window furniture	No; schedules to be provided post Building Regulation Stage.	<ul style="list-style-type: none"> <li>• Individual schedules will be provided for doors and windows per house type</li> </ul>

Ref	REVIEWABLE DESIGN DATA	REVIEWED PRIOR TO FINANCIAL CLOSE	DRAWING NUMBER OR REFERENCE
1.6	Room name and number schedule for each Property	No; See approach detailed opposite.	<ul style="list-style-type: none"> <li>• New build properties will be identified initially by project site and plot numbers (until postal addresses are confirmed).</li> <li>• Some schemes may require property or street names which will need to be discussed and agreed with the Council.</li> </ul>
<b>2.0</b>	<b>Environmental Works / Hard and Soft Landscaping / Boundary Treatment</b>		
2.1	Planting schedule. To include details of planting arrangements.	Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.	<ul style="list-style-type: none"> <li>• Boundary treatment plan at 1:500</li> <li>• Landscape plan at 1:500</li> <li>• Planting plan at 1:100</li> <li>• Landscape details at 1:100</li> </ul>
2.2	Highways Requirements		<ul style="list-style-type: none"> <li>• To be included on layout plans, including stopping up and adoption changes under Section 38 and 278 Agreements</li> </ul>

Ref	REVIEWABLE DESIGN DATA	REVIEWED PRIOR TO FINANCIAL CLOSE	DRAWING NUMBER OR REFERENCE
<b>3.0</b>	<b>Mechanical</b>		
3.1	Ventilation system distribution layout plan for kitchens and bathrooms.	Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.	<ul style="list-style-type: none"> <li>● House type floor plans at 1:50</li> <li>● Block floor plans at 1:100</li> </ul>
<b>4.0</b>	<b>Electrical, telecoms and ICT</b>		
4.1	Electrical installation distribution layout plans. To include power, telecommunications, ICT, BMS (if applicable), television, smoke detection, heat detection and sprinkler system.	Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.	<ul style="list-style-type: none"> <li>● House type floor plans at 1:50</li> <li>● Block floor plans at 1:100</li> </ul>
4.2	Lighting installation internal layout plan. To include emergency and task lighting where required	Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory	<ul style="list-style-type: none"> <li>● House type floor plans at 1:50</li> <li>● Block floor plans at 1:100</li> </ul>

Ref	REVIEWABLE DESIGN DATA	REVIEWED PRIOR TO FINANCIAL CLOSE	DRAWING NUMBER OR REFERENCE
		approvals and Certification requirements.	
4.3	Security alarm, internal/external CCTV and access control layout plan.	No; schedule to be provided at working drawing stage.	• Security alarm and CCTV layout
4.4	Details of assistive technology features (if applicable)	Not applicable	• Not applicable

Refurbishment and Conversion Sites			
	Servias	Information as defined below within sections 5.0 to 8.4 to be provided in line with Appendix 2.	
	Carltons 1	✓	
	Carltons 2	✓	
	Oatlands 1	Information as defined below within sections 5.0 to 8.4 to be provided in line with Appendix 2.	
	Oatlands 2	✓	
	Lovell Park	Information as defined below within sections 5.0 to 8.4 to be provided in line with Appendix 2.	
	Meynells and Ninevahs	✓	
	Ingrams and Balms	Information as defined below within sections 5.0 to 8.4 to be provided in line with Appendix 2	



Ref	REVIEWABLE DESIGN DATA	REVIEWED PRIOR TO FINANCIAL CLOSE	DRAWING NUMBER OR REFERENCE
5.0	<b>Architectural</b>		
5.1	<p>Internal room layout plans for each Area within each property Archetype (as identified for each neighbourhood scheme area) including elevations.</p> <p>To show fitments, indicative furniture layouts, loose furniture to communal areas of sheltered and conversion schemes, equipment, mechanical and electrical engineering services including CCTV and finishes (where appropriate)</p>	<p>Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.</p>	<ul style="list-style-type: none"> <li>● House type floor plans at 1:50</li> <li>● Communal floor plans (where applicable)</li> <li>● Kitchen and bathroom plans at 1:50</li> <li>● House type elevations at 1:100</li> <li>● Room data sheets</li> <li>● Furniture, fittings and equipment schedule (where applicable to Conversion and Sheltered schemes)</li> </ul>
5.2	Architectural materials and specification for each Archetype.	<p>Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.</p>	<ul style="list-style-type: none"> <li>● Refurbishment / Conversion specification</li> <li>● Elevation treatment schedule to include roof, walls, canopy, windows, doors and boundary treatments</li> </ul>
5.3	Architectural finishes schedule for each Archetype, Sheltered and Conversion scheme (including communal areas).	<p>Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable</p>	<ul style="list-style-type: none"> <li>● Internal finishes schedule to include kitchen units, finishes to ceilings, walls and floors</li> </ul>

Ref	REVIEWABLE DESIGN DATA	REVIEWED PRIOR TO FINANCIAL CLOSE	DRAWING NUMBER OR REFERENCE
		Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.	
5.4	Communal Entrance area details for each Property Type. Refurbishment, Sheltered schemes and the Conversion scheme	No; schedule to be provided post Building Regulation Stage.	<ul style="list-style-type: none"> <li>Internal finishes schedule to include kitchen units, finishes to ceilings, walls and floors.</li> </ul>
5.5	Doors & Window schedules. To include door & window furniture	No; schedule to be provided post Building Regulation Stage.	<ul style="list-style-type: none"> <li>Individual schedules will be provided for external doors and windows per house type.</li> <li>Internal doors will be picked up at survey stage.</li> <li>Conversion scheme will have new internal doors to flats</li> </ul>
5.6	Room name and number schedule for each Property	No; see approach detailed opposite.	<ul style="list-style-type: none"> <li>Existing properties will utilise their existing address and property number.</li> <li>Conversion property (Ingram Court) will have interim plot numbers allotted at working drawing stage until revised postal addresses are agreed and confirmed.</li> <li>Multi Storey / Sheltered / Conversion communal rooms / areas within these</li> </ul>

Ref	REVIEWABLE DESIGN DATA	REVIEWED PRIOR TO FINANCIAL CLOSE	DRAWING NUMBER OR REFERENCE
			<p>blocks will have a room number or appropriate name plates and will be named on the scheme way signage where required.</p> <ul style="list-style-type: none"> <li>• These areas will be detailed at the working drawing stage and subject to the RDD process</li> </ul>
6.0	<b>Environmental Works / Hard and Soft Landscaping / Boundary Treatment</b>		
6.1	<p>Planting schedule. To include details of planting arrangements.</p>	<p>Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.</p>	<ul style="list-style-type: none"> <li>• Boundary treatment plan at 1:500</li> <li>• Landscape plan at 1:500</li> <li>• Planting plan at 1:100</li> <li>• Landscape details at 1:100</li> </ul>

Ref	REVIEWABLE DESIGN DATA	REVIEWED PRIOR TO FINANCIAL CLOSE	DRAWING NUMBER OR REFERENCE
	Courtyard Options	Yes; following consultation for courtyard designs final layouts are to be provided.	<ul style="list-style-type: none"> <li>• Courtyard layout plan for appropriate location.</li> </ul>
	Highways Requirements		<ul style="list-style-type: none"> <li>• To be included on layout plans, including stopping up and adoption changes under Section 38 and 278 Agreements</li> </ul>
<b>7.0</b>	<b>Mechanical</b>		
7.1	Ventilation system distribution layout plan for kitchens and bathrooms.	Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.	<ul style="list-style-type: none"> <li>• House type floor plans at 1:50</li> <li>• Block floor plans at 1:100</li> </ul>
<b>8.0</b>	<b>Electrical, telecoms and ICT</b>		
8.1	Electrical installation distribution layout plans. To include power, telecommunications, ICT, BMS (if applicable), television and smoke detection.	Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.	<ul style="list-style-type: none"> <li>• House type floor plans at 1:50</li> <li>• Block floor plans at 1:100</li> </ul>

Ref	REVIEWABLE DESIGN DATA	REVIEWED PRIOR TO FINANCIAL CLOSE	DRAWING NUMBER OR REFERENCE
8.2	<p>Lighting installation internal layout plan.</p> <p>To include emergency and task lighting where required.</p>	<p>Yes; see above for individual sites marked with a ✓ that are deemed reviewed at Financial Close. However, these may be subject to review and approval through the Reviewable Design Data process, as part of the discharge of planning conditions, statutory approvals and Certification requirements.</p>	<ul style="list-style-type: none"> <li>• House type floor plans at 1:50</li> <li>• Block floor plans at 1:100</li> </ul>
8.3	<p>Security alarm, external CCTV and access control layout plan.</p>	<p>No; schedule to be provided at working drawing stage.</p>	<ul style="list-style-type: none"> <li>• Security alarm and CCTV layout plan</li> </ul>
8.4	<p>Details of assistive technology features (if applicable)</p>	<p>Not applicable</p>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>

## **APPENDIX 2**

### **Reviewable Design Data Programme**

The Reviewable Design Data Programme for each Site shall be as specified in the Construction Programme and denoted in each case as “Reviewable Design Data” in the column titled “Description” in the Construction Programme.

## APPENDIX 3

### Submitted Item Tracking Sheet

# ITEM TRACKING SHEET - Reviewable Design Data

This Item Tracking Sheet is to be used in conjunction with Schedule 7 of the Project Agreement (Review Procedure).

Purpose: This sheet shall be used 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.

Each submission that SC4L provide shall be accompanied by a copy of the proposed document to be reviewed or a statement of the proposed course of action and in accordance with the Reviewable Design Data Programme.

To be complete by SC4L						To be complete by Leeds City Council				
Ref No	1. Date of Initial Submission  2. Date of Resubmission	Workstream Area/Ref	Address / Location	Document Title/Drawing Number	1. Reason for RDD Initial Submission (provide a copy of the document(s) to be reviewed including supporting information that relates to time, cost & quality issues)  2. Reason for RDD Resubmission (provide information as detailed in the LCC Response to RD)	1. LCC Response to Initial Submission  2. LCC Response to Resubmission	Date of LCC Response to: 1. Initial Submission (within 10 Working Days)  2. Resubmission (within 5 Working Days)	OVERALL RDD STATUS (No Comment, Comment, Objection)	Approved by:	Additional Comments

## SCHEDULE 8

### Prohibited Materials

The following is a list of components or materials that shall not in any form be used as any part of the works.

- Concrete or mortar additives containing Calcium Chloride.
- Concrete that may be susceptible to Alkali / Silica Reaction (ASR).
- High Alumina Cement.
- Woodwool formers as permanent.
- Concrete shuttering.
- Calcium Silicate bricks.
- Asbestos based products.
- Slipbricks.
- Calcium Chloride additives.
- Sea dredged aggregates.
- All materials containing Lead (except for roofing, cladding, damp proofing and guttering).
- All products containing, or made with, Halon / CFC's including blown insulations, solvents, refrigerants unless there are no available alternatives.
- Materials not complying with appropriate British Standards or CE Standards and any materials known to be deleterious to health.
- Materials containing loose fibres of less than 3 microns diameter.
- PCB Transformers.
- Re-wirable fuses.



- Ionising lightning conductors.
- Aggressive fluxes.
- Liquefied Petroleum gas in any building which is constructed from large panels. All such use should be approved prior to commencement.

## SCHEDULE 9

### Liaison Procedure

#### Project Liaison Group

- 1.1 The City Council and the Contractor shall establish and maintain throughout the Contract Period a Project Liaison Group ("**Project Liaison Group**") for each of the geographical project areas (i.e. a Project Liaison Group for Little London and a Project Liaison Group for Beeston Hill & Holbeck) which shall have the functions described below.. The groups will consist of the following:

<b>Little London</b>	<b>Beeston Hill &amp; Holbeck</b>
1 LCC councillors	2 LCC councillors
1 ALMO Board Member	1 ALMO Board Member
2 members from the Contractor	2 members from the Contractor
3 residents from the Little London project area	3 residents from the Beeston Hill & Holbeck project area
2 LCC/ALMO officers	2 LCC/ALMO officers

A chairperson shall be elected for each Project Liaison Group ("**Chairperson**"). Where a majority of the Project Liaison Group so determines, additional members being properly qualified to participate in discussions relating to any particular matter, may be invited to attend Project Liaison Group meetings. These members having no voting rights.

- 1.2 The Contractor and the City Council 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 City Council agree that the Contractor shall procure the attendance of the Responsive Repairs and Cyclical Maintenance and Renewal 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 In the event of any member of the group resigning their position, the relevant party or group being represented shall nominate another, suitable representative member.
- 1.5 Should the majority of members of any Project Liaison Group agree that the best interests of the Project would be served by the removal of one or more members of the Project Liaison Group, then they may so agree at any Project Liaison Group meeting, recording the reasons why such member should be removed, and a substitute member shall be proposed by the relevant group or party in accordance with paragraph 1.4 above.

## **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 stakeholders connected with the Project; and
- 2.3 The consideration of issues relating to:
  - 2.3.1 Consents
  - 2.3.2 provision of the Works and Services, including transition between differing level of Service provision;
  - 2.3.3 City Council Changes; and
  - 2.3.4 ongoing project communications;
  - 2.3.5 review of Contractor's performance

## **3. Role**

The role of the Project Liaison Groups is to make recommendations to the City Council and to the Contractor, which the City Council and the Contractor may accept or reject at their complete discretion. Neither the Project Liaison Groups, nor their

members acting in that capacity, shall have any power to vary any of the provisions of this Agreement or to make any decision binding on all parties. The City Council and the Contractor shall not rely on any act or omission of the Project Liaison Groups, or any members of the Project Liaison Groups 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 City Council or of the Contractor under this Agreement. No discussion, review or recommendation by the Project Liaison Group shall relieve the City Council or the Contractor of any liability or vary such liability or any right or benefit.

#### **4. Representatives**

The City Council and the Contractor may appoint their representatives on the Project Liaison Groups and remove representatives and appoint replacements, by written notice delivered to the other at any time. City Council councillors on each Project Liaison Groups shall be appointed by the City Council. Resident representatives shall be elected by the community and any tenants and residents association for each area, and shall either be selected by agreement between such groups acting reasonably. A representative on the Project Liaison Groups may appoint and remove an alternate (who may be another representative of that party or group) 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.

#### **5. Practices and procedures**

Subject to the provisions of this schedule 9 (Liaison Procedure), the members of the Project Liaison Groups may adopt such procedures and practices for the conduct of activities of the Project Liaison Groups as they consider appropriate. As the scope of the Project Liaison Groups are to raise and discuss project delivery issues, and to make recommendations to the City Council and Contractor, as appropriate, no quorum level is to be adhered to.

#### **6. Recommendations**

Recommendations and other decisions of the Project Liaison Groups must have the affirmative vote of the majority of members present when the vote is cast, and must include at least one Tenant/resident representative. In the event of a split vote the

Chairperson shall have the casting vote. Each member of the Project Liaison Group shall have one vote.

**7. Chairperson**

The Chairpersons of the Project Liaison Groups shall be nominated by each of the four groups of representatives every six months in rotation during the Contract Period. The Chairperson shall be elected from within each group's representatives on the Project Liaison Group.

**8. Frequency of Meetings**

The Project Liaison Groups for each project area shall meet at least once every two months during the Works period and thereafter at least once every quarter.

There will be at least 2 open public meetings of the Project Liaison Group per annum, per project area.

**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) Working 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**

The Contractor and the City Council shall ensure that their representatives (or alternates) attend each meeting of the Project Liaison Group. Other members shall attend no less than 4 meetings per annum, within the first 5 years of the contract, and no less than 2 meetings thereafter. Should a member fail to meet these attendance levels then their membership may be terminated by mutual consent of the appropriate Project Liaison Group, and alternative representatives appointed.

## **12. Minutes**

Minutes of all decisions and meetings of the Project Liaison Groups shall be kept by the Contractor and copies circulated promptly to all group members, normally within 10 Working 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 City Council or any other member of that group at any time, upon request, and, for the avoidance of doubt, such minutes shall not be Confidential Information for the purposes of this Agreement.

## **SCHEDULE 10**

### **Warranted Data**

#### **Part 1 - City Council Warranted Data - Housing Information**

##### **1. EXTENT OF PROJECT**

1.1 The list of Refurbishment Dwellings contained in part 1 of appendix 2 comprises all of the Refurbishment Dwellings in the Project as at the date hereof.

1.2 The Leasehold Dwellings in the Project as at the date hereof are only those listed in part 2 of appendix 2.

##### **2. [Not used]**

##### **3. TERMS OF TENANCIES AND LEASES**

3.1 The form of all secure tenancy agreements and introductory tenancy agreements entered into with Tenants at appendix 3 reflects the entire agreement between the City Council and the Tenants and is the only form of tenancy agreement relating to the Refurbishment Dwellings comprising the Project (with the exceptions of the Leasehold Dwellings).

3.2 The forms of leases entered into with the Leaseholder at appendix 4 reflect the entire agreement between the City Council and the Leaseholders and there are no other forms of Leaseholder Lease materially different relating to the Leasehold Dwellings.

##### **4. CONTENTS OF SECTION 125 NOTICES**

In respect of Leasehold Dwellings where the lease was granted within 5 years prior to the date of the Agreement, the City Council confirms that all the notices served under Section 125 of the 1985 Act were issued in the form appended at part 1 of appendix 6 and that the service charge estimates were provided as set out in part 2 of appendix 6 and were validly served.

5. **CP12 CERTIFICATES**

Refurbishment Dwellings listed in appendix 8 have in force a valid CP12 certificate (where applicable).

6. **LITIGATION**

The list of outstanding litigation in relation to repairs in relation to Refurbishment Dwellings to which the City Council is a party are as at 27 June 2013, as set out in appendix 9.





[REDACTED]

[REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED] [REDACTED]
■ [REDACTED]	[REDACTED] [REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED] [REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED] [REDACTED]

[REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]
	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]
■ [REDACTED]	[REDACTED]



### Part 3 - Contractor Warranted Data

**1. REGISTERED NAME OF CONTRACTOR:**

Sustainable Communities for Leeds Limited

**2. REGISTERED OFFICE OF CONTRACTOR:**

c/o K&L Gates LLP, One New Change, London, EC4M 9AF

**3. COMPANY REGISTRATION NUMBER OF CONTRACTOR:**

08320624

**4. DIRECTORS OF CONTRACTOR:**

William James Haughey (Sponsor - Uberior)

David Joyce (Sponsor - Uberior)

Fabio D'Alonzo (Sponsor - Equitix)

Sion Laurence Jones (Sponsor - Equitix)

David Anthony Sheridan (Sponsor - Keepmoat)

James Michael Douglas Thomson (Sponsor - Keepmoat)

**5. SHAREHOLDERS OF CONTRACTOR (WITH RESPECTIVE SHAREHOLDINGS):**

Sustainable Communities for Leeds (Holdings) Limited (100%)

**6. REGISTERED NAME OF CONTRACTOR'S HOLDING COMPANY:**

Sustainable Communities for Leeds (Holdings) Limited

**7. REGISTERED OFFICE OF CONTRACTOR'S HOLDING COMPANY:**

c/o K&L Gates LLP, One New Change, London, EC4M 9AF

**8. COMPANY REGISTRATION NUMBER OF CONTRACTOR'S HOLDING COMPANY:**

8319372

**9. DIRECTORS OF CONTRACTOR'S HOLDING COMPANY:**

William James Haughey (Sponsor - Uberior)

David Joyce (Sponsor - Uberior)

Fabio D'Alonzo (Sponsor - Equitix)

Sion Laurence Jones (Sponsor - Equitix)

David Anthony Sheridan (Sponsor - Keepmoat)

James Michael Douglas Thomson (Sponsor - Keepmoat)

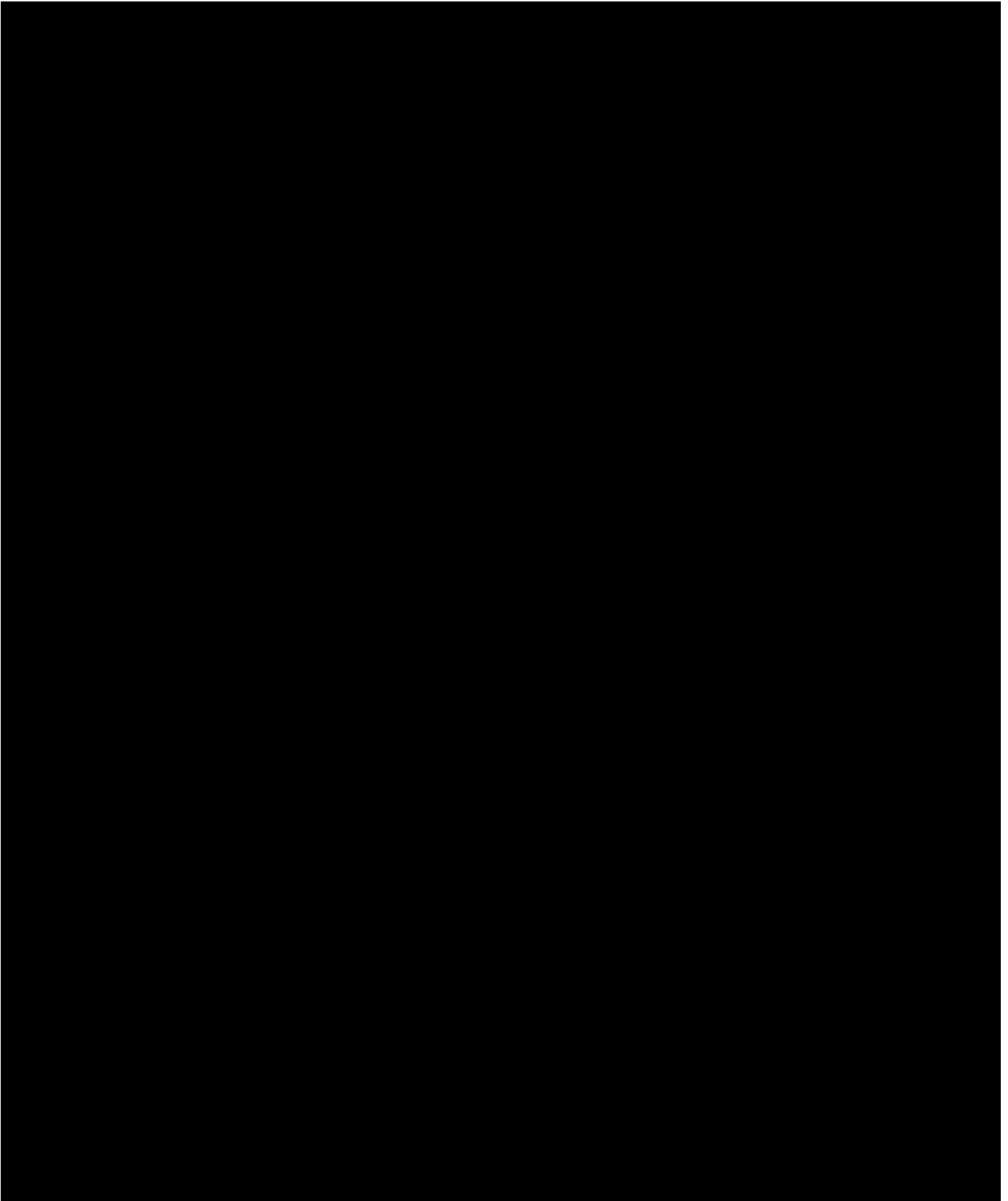
**10. SHAREHOLDERS OF CONTRACTOR'S HOLDING COMPANY (WITH RESPECTIVE SHAREHOLDINGS):**

Uberior Infrastructure Investments (number 5) Limited – 50%;

Keepmoat Investments Limited – 10%; and

Equitix Housing 2 Limited – 40%.

#### Part 4 - Proposed Workforce Information



The monthly costs of employing the relevant employees who are expected to be engaged in the provision of the Services (the Remuneration Costs) are shown in the table below:



Service area	Annual Salary	Annual Employer NI	Annual Employer Pension Contribution	Overall Annual Cost	Monthly Cost
Cleaning and Caretaking	£63,792	£7,025	£5,799	£76,617	£6,385

One off costs (Reorganisation Costs) such as systems training, human resource support and the costs associated with a Local Government Pension Scheme bond are being absorbed centrally by tier two subcontractor Milnerbuild. There will be no other Reorganisation Costs.

## SCHEDULE 11

### 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 11 (*Relevant Discharge Terms*) 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 City Council the sum equivalent to the amount of compensation payable by the City Council to the Contractor pursuant to clause 44 (*Compensation on Termination for City Council Default*);
3. The City Council shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets to the City Council or as directed by the City Council.
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 11 (*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 City Council in the circumstances contemplated by paragraph 2.

## **SCHEDULE 12**

### **Required Insurances**

This schedule 12 comprises six parts:

Part 1 - Policies to be taken out by the Contractor and maintained during the Works Period

Part 2 - Policies to be taken out by the Contractor and maintained during the Services Period

Part 3 - Endorsements

Part 4 - Broker's Letter of Undertaking

Part 5 - Definitions

Part 6 - Insurance Premium Risk Sharing

Part 7 - Model for City Council Self-Insurance

## Part 1

### Policies to be taken out by the Contractor and maintained during the Works Period

Common to each policy in part 1 (unless stated otherwise):

#### Insureds:

1. the City Council
2. the Contractor
3. the Building Contractor
4. the Responsive Repairs and Cyclical Maintenance and Renewal Contractor
5. all other contractors &/or sub-contractors of 2, 3 and 4 above in any tier employed in connection with the Project (to the extent required by contract in respect of sub-contractors of 4 above only)
6. Professional Team, and manufacturers and suppliers to the above for their site activities only in connection with the Project
7. the Senior Funders,

each for their respective rights and interests.

#### 1. Contractors' 'All Risks' Insurance (CAR)

Insured Property	The permanent and temporary works, materials (including but not limited to equipment supplied by the City Council), 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.
Coverage	"All risks" of physical loss or damage to the Insured Property unless otherwise excluded.
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 Cover Features and Extensions as appropriate.
Maximum Deductibles	£10,000 each and every loss but increasing to £25,000 each and every loss in respect of storm, flood and subsidence and £150,000 each and every loss in respect of DE5 (or its equivalent) and  20% co-insurance in respect of Increased Cost of Construction of Incomplete Works.

Territorial Limits	Anywhere in Europe including offsite storage and during transit.
Period of Insurance	From the Commencement Date until expiry of the Works Period and thereafter in respect of defects liability until expiry of the defects liability period as detailed in the Building Contract.
Cover Features & Extensions	<p>Terrorism</p> <p>Munitions of War clause</p> <p>Additional costs of completion clause</p> <p>Professional fees clause</p> <p>Debris removal clause</p> <p>72 hours clause</p> <p>European Union local authorities clause</p> <p>Free issue materials clause</p> <p>15% escalation clause</p> <p>Automatic reinstatement of Sum Insured clause</p> <p>Loss minimisation</p> <p>Expediting expenses - limit not less than £1,000,000</p> <p>Plans and documents -limit not less than £100,000</p> <p>Full guarantee maintenance</p> <p>Marine 50/50 clause</p> <p>Repair/reinstatement basis of claims settlement with cash option for non reinstatement.</p> <p>Waiver of subrogation rights against the ALMO and any City Council Related Party other than sub-contractors in accordance with the provisions of Endorsement 2 in part 3 of schedule 12 (<i>Required Insurances</i>)</p>
Principal Exclusions	<p>War and related perils (UK market agreed wording)</p> <p>Nuclear/radioactive risks (UK market agreed wording)</p> <p>Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds</p> <p>Wear tear and gradual deterioration</p>

Consequential financial losses

Cyber risks

Inventory losses, fraud and employee dishonesty

Building Contractors and/or sub-contractors plant, tools and equipment

Liquidated and ascertained damages

Air and sea transits other than by Ro-Ro ferry

DE5 (or its equivalent) - design improvement

## **2. Delay in Start Up Insurance (DSU)**

Insureds the Contractor

the Senior Funders

each for their respective rights and interests in the Project.

Indemnity In respect of:

(a) 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 paragraph 1 of part 1 of this schedule, including physical loss or damage which would be indemnifiable but for the application of any deductible;

(b) 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.

Sum Insured An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period

Maximum Deductible 45 days deferment period in the aggregate

Minimum Indemnity Period 12 months increasing to 24 months in relation to tower blocks

Period of Insurance From the Commencement Date until expiry of the Works Period

Cover Features & Extensions	<p>Denial of access</p> <p>Loss of Utilities (fire, lightning, explosion, earthquake, aircraft and other aerial devices and articles dropped therefrom only)</p> <p>Terrorism</p> <p>Automatic reinstatement of sum insured</p> <p>Professional fees</p> <p>Named Suppliers premises (fire, lightning, explosion, earthquake, aircraft and other aerial devices and articles dropped therefrom only)</p> <p>Waiver of subrogation rights against the City Council, the ALMO and any City Council Related Party other than sub-contractors.</p>
Principal Exclusions	<p>Exclusions under the Contractor's 'All Risks' Insurance, other than for consequential financial losses.</p> <p>Delayed response by a public body or state authority.</p>

### 3. Construction Third Party Liability Insurance

Interest	<p>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:</p> <ul style="list-style-type: none"> <li>(a) death, or bodily injury, illness, disease contracted by any person;</li> <li>(b) loss or damage to property;</li> <li>(c) 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.</li> </ul> <p>happening during the Period of Insurance and arising out of or in connection with the Project.</p>
Limit of Indemnity	<p>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</p>
Maximum Deductible	<p>£10,000 for each and every occurrence of property damage.</p> <p>(Personal injury claims will be paid in full).</p>
Territorial Limits	<p>United Kingdom and elsewhere in the world in respect of non manual visits.</p>

Jurisdiction	Worldwide excluding USA, Canada and Australia
Period of Insurance	As per the Contractors' 'All Risks' Insurance, including the defects liability period
Cover Features & Extensions	<ol style="list-style-type: none"> <li>1. Munitions of war.</li> <li>2. Cross liability clause.</li> <li>3. Contingent motor.</li> <li>4. Legal defence costs.</li> <li>5. Contractual liability</li> <li>6. Costs and expenses in addition to indemnity limit</li> <li>7. Indemnity to the ALMO and any City Council Related Party other than sub-contractors in connection with the Works carried out by the Contractor or a Contractor Related Party</li> </ol>
Principal Exclusions	<ol style="list-style-type: none"> <li>1. Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of and in the course of their business.</li> <li>2. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.</li> <li>3. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.</li> <li>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 Council or Tenants which is in the care, custody and control of another Insured.</li> <li>5. Events more properly covered under a professional indemnity policy, but not excluding death or bodily injury to persons or damage to third party property</li> <li>6. Liability arising from the ownership, possession or use of any aircraft or marine vessel.</li> <li>7. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.</li> <li>8. Losses indemnified under the CAR or DSU Insurances.</li> <li>9. Asbestos liability</li> </ol>



10. Cyber risks
11. Liability arising out of the provision of the Services

## Part 2

**Policies to be taken out by the Contractor and maintained during both the Works Period (in relation to the Property Damage Insurance detailed in paragraph 1 of this schedule 12 (*Required Insurances*) , in relation to existing stock) and the Services Period.**

Common to all policies in part 2 (unless stated otherwise):

### **Insureds:**

1. the City Council
2. the Contractor
3. the Responsive Repairs and Cyclical Maintenance and Renewal Contractor
4. the Building Contractor and all subcontractors to the Building Contractor of any tier, until the expiry of the defects liability period under the Building Contract (in respect of paragraph 1 *Property Damage Insurance* only)
5. all other contractors &/or sub-contractors of 2 and 3 above in any tier employed in connection with the Project, (but in respect of paragraph 3 *Third Party and Products Liability Insurance* to the extent that their activities are required to be insured under the sub-contracts with such Insureds)
6. the Senior Funders,  
each for their respective rights and interests.

### **1. Property Damage Insurance**

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 Properties, but excluding property other than garages provided as part of the Environmental Works.
Coverage	"All Risks" of physical loss or damage to the Insured Property from any cause not excluded including machinery breakdown and computer breakdown in respect of appropriate equipment.
Sum Insured	At all times an amount not less than the total reinstatement or replacement value of such Insured Property plus provision to include other Cover Features and Extensions as appropriate, (escalated periodically as appropriate)
Maximum Deductible	£10,000 each and every loss (escalated periodically as appropriate in accordance with clause 61.5)
Territorial Limits	On or about the Project Sites and elsewhere in United Kingdom as catered for by the Cover Features and Extensions to this Insurance

Period of Insurance	From the Commencement Date or as otherwise specified in the Agreement for the duration of the Contract Period and renewable on not less than an annual basis unless agreed otherwise by Insureds 1 and 2 above.
Cover Features & Extensions	<p>Terrorism</p> <p>Automatic reinstatement of the Sum Insured</p> <p>Capital Additions clause</p> <p>72 hours clause</p> <p>European Union local authorities clause</p> <p>Professional fees</p> <p>Debris removal</p> <p>Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded.</p> <p>Repair/reinstatement basis of claims settlement with cash option for non reinstatement.</p> <p>Day one reinstatement - +15% increase in Sum Insured</p> <p>Workmans clause</p> <p>Temporary removal</p> <p>Waiver of subrogation rights against the City Council, the ALMO and any City Council Related Party other than sub-contractors in accordance with the provisions of Endorsement 2 in part 3 of schedule 12 (<i>Required Insurances</i>)</p>
Principal Exclusions	<p>War and related perils (UK market agreed wording).</p> <p>Nuclear/radioactive risks (UK market agreed wording).</p> <p>Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.</p> <p>Wear tear and gradual deterioration.</p> <p>Consequential financial losses.</p> <p>Cyber risks</p> <p>Losses recovered under the CAR Insurance.</p> <p>Unexplained shortages or disappearance at time of taking an inventory</p>

Latent defects

## 2. Business Interruption Insurance

Insureds	the Contractor the Senior Funders both for their respective rights and interests in the Project.
Indemnity	In respect of:  loss of 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 clause 1 of part 2 of this schedule including physical loss or damage which would be indemnifiable but for the application of any deductible;  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.
Sums Insured	An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period
Maximum Deductible	£10,000 each and every occurrence, (escalated periodically as appropriate in accordance with clause 61.5)
Minimum Indemnity Period	12 months increasing to 24 months in respect of tower blocks
Period of Insurance	As under the Property Damage Insurance
Cover Features & Extensions	Denial of access Terrorism Utilities (fire, lightning, explosion, earthquake, aircraft and other aerial devices and articles dropped therefrom only) Accountants clause Automatic reinstatement of the Sum Insured Named Suppliers (fire, lightning, explosion, earthquake, aircraft and other aerial devices and articles dropped therefrom only) Notifiable diseases Waiver of subrogation rights against the City Council, ALMOs and any City Council Related Party other than sub-

contractors.

Principal Exclusions Exclusions under the Property Damage Insurance, other than for consequential financial losses.

Delayed response by a public body or state authority.

### 3. Third Party Public and Products Liability Insurance

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:

(a) death or bodily injury, illness, disease contracted by any person

(b) loss of or damage to property

(c) interference to property or any easement right of air light water or way or the enjoyment or use thereof by obstruction trespass loss of amenities nuisance or any like cause

happening during the Period of Insurance and arising out of or in connection with the operation of the Project and the provision of the Services.

Limit of Indemnity Not less than £50,000,000 (escalated periodically as appropriate in accordance with clause 61.5) in respect of any one occurrence, the number of occurrences being unlimited, but in the annual aggregate in respect of products and pollution liability.

Maximum Deductible £10,000 for each and every occurrence of property damage, (escalated periodically as appropriate in accordance with clause 61.5).

(Personal injury claims will be paid in full).

Territorial Limits United Kingdom and elsewhere in the world in respect of non manual visits

Jurisdiction Worldwide excluding USA, Canada and Australia

Period of Insurance As under the Property Damage Insurance

Cover Features & Extensions Munitions of war

Cross liabilities

Contingent motor liability

Legal defence costs

Costs and expenses in addition to indemnity limit

## Contractual liability

Indemnity to the ALMO and any City Council Related Party other than sub-contractors in connection with the provision of the Services by the Contractor or a Contractor Related Party under the Project

## Principal Exclusions

Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of and in the course of their business.

Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

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 City Council or Tenant which is in the care, custody and control of another Insured Party.

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.

Liability arising from the ownership, possession or use of any aircraft or marine vessel.

Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

Losses under the Property Damage or Business Interruption Insurances.

Asbestos liability

Cyber risks

Toxic Mould

**Part 3**  
**Endorsements**

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Agreement.

**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 City Council:

- (a) at least 30 days before any such cancellation or termination is to take effect;
- (b) at least 30 days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
- (c) 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.

**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:

- (1) no party other than the City Council has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the City Council;
- (2) where any warranty, disclosure or representation is required from the City Council in connection with this policy insurers will contact the City Council in writing (in accordance with Endorsement 3 to the Agreement) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the City Council (regarding itself); and
- (3) save as set out in a request from insurers to the City Council in accordance with (2) above, the City Council shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the City Council not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.



### **Endorsement 3**

#### **Communications**

All notices or other communications under or in connection with this policy shall be given to each insured (and the City Council) in writing or by facsimile. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered;
- (b) 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 City Council for all notices under or in connection with this policy are those notified from time to time by the City Council for this purpose to the Contractor at the relevant time. The initial address and facsimile number of the City Council are as follows:

The Council: Leeds City Council

Address: 4th Floor Merrion House,  
110 Merrion Street,  
Leeds LS2 8DT

Facsimile No: 0113 224 3543

Attention: Director of Environments and Neighbourhoods

It is further agreed that a notice of claim given by the City Council 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.

### **Endorsement 4**

#### **Loss Payee (applicable only to the Physical Damage Policies)**

Subject to the provision of clause 60 all proceeds of this policy shall be payable without deduction or set-off to the Joint Insurance Proceeds Account (as defined below in Section I of Endorsement 6).

## 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.

## 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.

OR

## LENDERS AND AUTHORITY'S INSURANCE POLICY ENDORSEMENT

(Zurich Standard Version)

Notwithstanding any other provision of this Policy, the following endorsement shall apply:

### Section I: Definitions

#### 1 In this endorsement:

**Authority** means Leeds City Council of Civic Hall, Leeds LS1 1UR;

**Collateral Deed** means the collateral deed dated [ ] between, amongst others, Project Company and the Security Trustee;

**Finance Parties** has the meaning given to it in the Collateral Deed and includes any assignee, transferee, successor or novated, replacement or additional creditor of or in relation to any of the foregoing;

**Insured** means those parties so described in the Policy schedule;

**Insurers** means the insurer or insurers underwriting this insurance policy;

**Joint Insurance Proceeds Account** means the account held in the joint names of Project Company and the Authority with Lloyds TSB Bank plc with account number 01978085 and sort code 30-00-02;

**Project** has the meaning given to it in the Project Agreement;

**Project Company** means Sustainable Communities for Leeds Limited (company registered number 08320624) whose registered office is c/o K&L Gates LLP, One New Change, London, EC4M 9AF;

**Project Company Insurance Proceeds Account** means the account in the name of the Project Company with Lloyds TSB Bank plc with account number 01971226 and sort code 30-00-02; and

**Security Trustee** means BNY Mellon Corporate Trustee Services Limited (company registered under 02631386) in its capacity as security trustee.

## **Section II: Policy formation / basis**

### **2 Separate Policy**

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each Insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

### **3 Interest of the Finance Parties and the Authority**

3.1 The Insurers acknowledge that the Finance Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional co-insureds under this Policy and that the premium specified in this Policy provides consideration for their being co-insured parties.

3.2 The Insurers acknowledge that the Authority and (in respect of third party liabilities) its officers, directors, employees, secondees and assigns are each

additional co-insureds under the sections of this Policy relating to material damage risks and public liability risks and that the premium specified in this Policy provides consideration for their being co-insured parties.

#### **4 Liability for premium**

Neither the Security Trustee, the Finance Parties nor the Authority shall be liable for the payment of any premium under this Policy although they may choose to pay the premium. This shall not relieve Project Company from its obligations to pay any premium under this Policy.

#### **5 Disclosure**

- 5.1 The Finance Parties shall have no duty of disclosure to Insurers in relation to the Policy. Nevertheless, on the written request of the Insurers, the Finance Parties shall provide the Insurers with access to any relevant due diligence report(s) commissioned by the Finance Parties relating to the Project and the Insurers shall keep such report(s) confidential and shall accept such information without rights of recourse against the party / parties that prepared the said reports.
- 5.2 The Insurers acknowledge to the Finance Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring Project Company in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Finance Parties or their directors, officers, employees or agents, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Finance Party. The acknowledgements provided by the Insurers in this clause 5.2 shall have no effect on any rights that Insurers might have had under or in relation to the Policy against any party (including Project Company) other than the Finance Parties and the Security Trustee in the absence of such acknowledgements.
- 5.3 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the

adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

### **Section III: Rights to avoid / cancel or change Policy terms**

#### **6 Non-vitiation**

6.1 The Insurers undertake to each Insured that the Policy will not be invalidated as regards the rights and interests of such Insured and that the Insurers will not seek to avoid any liability under this Policy because of any act, neglect, error or omission made by any other Insured, including any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfilment by any other Insured of any condition, warranty or provision contained in the policy.

6.2 The Insurers agree that no Insured shall be penalised or prejudiced in any way by any unintentional or inadvertent misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of this Policy (together "**the Relevant Matter**"), but that this shall not apply as regards the individual Insured responsible for the Relevant Matter if that Insured fails to notify the Insurers or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Insured become aware or are made aware of the Relevant Matter.

#### **7 Cancellation**

7.1 The Insurers agree that they shall not seek to cancel or suspend the construction phases of this insurance except: (i) for non payment of premium; or (ii) where an insured party consistently fails to comply with Insurers' requirements relating to survey or loss control action points; or (iii) where an insured party is in breach of an applicable Joint Code of Practice (or equivalent).

7.2 The Insurers shall promptly notify the Security Trustee and the Authority in writing in the event of any:

7.2.1 suspension, cancellation, termination; or

7.2.2 in the case of cover under Sections 4, 5 or 6 of this Policy (material damage - operational period; loss of revenue - services; public liability - services), non-renewal of this Policy by the Insurers or by the Insured. The cover provided by this Policy shall continue in force and unaltered for at least 30 days after written notice of such suspension, cancellation, termination or (in the case of cover under Sections 4, 5 or 6) non-renewal is given to the Security Trustee and the Authority. Nothing in this clause shall give the Insurers any right to suspend, cancel or terminate this Policy which the Insurers do not otherwise have under this Policy.

7.3 The Insurers shall promptly notify the Security Trustee and the Authority in writing of any default in the payment of premium and shall give the Security Trustee and the Authority at least 30 days notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

## **8 Changes in cover**

The Insurers shall give the Security Trustee and the Authority at least 30 days notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

## **9 Amendments to Endorsement**

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between Project Company, the Insurers and the Security Trustee, such amendment to be endorsed on the Policy.

## **Section IV: Claims**

### **10 Notice of claims**

Notice of claim by the Authority or the Finance Parties or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

## **11 Claim Payments / Loss Payee**

Payments made in accordance with this clause 11 shall, to the extent of the payment, discharge the Insurers' liability to pay Project Company or any other Insured.

### **11.1 In respect of the insurance under this Policy of material damage risks only**

All claim payments or return premium shall be paid into the Joint Insurance Proceeds Account or to such other account as the Security Trustee as loss payee may specify in writing.

### **11.2 In respect of the insurance under this Policy of public liability risks only**

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the Project Company Insurance Proceeds Account or such account as the Security Trustee directs in writing.

Any return premiums shall be paid to the Project Company Insurance Proceeds Account or such other account as the Security Trustee directs in writing.

### **11.3 In respect of the insurance under this Policy of loss of revenue risks only**

All claim payments or return premiums shall be paid to the Joint Insurance Proceeds Account or such other account as the Security Trustee directs in writing.

### **11.4 Set-off**

Insurers may, at their discretion, deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by Project Company under or in relation to the Policy.

## **12 Waiver of subrogation**

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the appropriate schedules arising out

of any Occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any:

- 12.1 such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition; or
- 12.2 consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- 12.3 supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or
- 12.4 such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within sub-clause 13.1 - 13.13.5 below (or would be so insured if cover in the terms set out in this Policy had not been taken out); or
- 12.5 in relation to losses paid under Sections 4 or 5 of the Policy (material damage - operational period; loss of revenue - services), any Insured who is not covered under those Sections.

### **13 Primary insurance**

The Insurers agree that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk insured under this Policy is also insured under any other policy of insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

- 13.1 excess layers of third party cover effected specifically for the Project;
- 13.2 any public liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;



- 13.3 any claim under this Policy to which a Marine 50/50 clause applies;
- 13.4 any claim made under a Contingent Motor Liability extension to this Policy;  
or
- 13.5 any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:
- 13.6 any other policy specifically effected for the construction or operational phase(s) of the Project; or
- 13.7 a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Project;
- 13.8 or a related business interruption insurance policy.

## **Section V: Miscellaneous**

### **14 Notice of Security Interest**

- 14.1 The Insurers acknowledge that by an assignment contained in a debenture dated [ ] (the "**Assignment**"), Project Company assigned by way of security to the Finance Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers confirm that they have not been notified of any other assignment of or security interest in Project Company's interest in this insurance.

### **15 Notice**

- 15.1 All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:
  - 15.1.1 if by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and
  - 15.1.2 if by post, within 2 business days of release from the relevant Insurer's office.

- 15.2 The address and fax number of the Security Trustee for all notices under or in connection with the Policy are those notified from time to time by the Finance Parties for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Security Trustee is as follows:

The Security Trustee            BNY Mellon Corporate Trustee Services Limited

Address:                            [       ]

Fax No:                             [       ]

Attention:                         [       ]

- 15.3 The address and fax number of the Authority for all notices under or in connection with the Policy are those notified from time to time by the Authority for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Authority is as follows:

The Authority:                    Leeds City Council

Address:                            Navigation House  
  
    George Mann Road  
  
    Leeds  
  
    LS11 8DJ

Fax No:                             N/A

Attention:                         Dave Purdy

## **16    Governing law & Jurisdiction**

The Policy shall be governed and interpreted in accordance with English law. This endorsement overrides any conflicting provision in this Policy.

**Part 4**  
**Broker's Letter of Undertaking**

To: Leeds City Council

Dear Sirs

**Agreement dated [ ] entered into between Sustainable Communities for Leeds Limited (the Contractor) and Leeds City Council (the City Council) (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 59 and schedule 12 (Required Insurances) of the Agreement (attached hereto as appendix A):
  - (a) where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
  - (b) are, to the best of our knowledge and belief (after making reasonable enquiries) as of today's date, in full force and effect;
  - (c) 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 that
  - (d) the endorsements set out in part 3 to schedule 12 (Required Insurances) of the Agreement (attached hereto as appendix C) are to the best of our knowledge and belief as at today's date in full force and effect in respect of the Required Insurances.
- 3 We further confirm that the cover notes attached hereto as appendix B 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 City Council in relation to the Required Insurances:

**(a) Notification Obligations**

- (i) 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 as soon as reasonably practicable, and in any event within 3 working days of the details thereof;
- (ii) 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 in any event within 3 working days, and
- (iii) to pay into the Joint Insurance Proceeds Account without set off or deduction of any kind for any reason all payments received in respect of claims received by us from insurers in relation to the Required Insurance specified in clause 60.2 of the Agreement attached hereto as appendix D.

**(b) Advisory Obligations**

- (i) to notify you as soon as reasonably practicable and in any event within 3 working days of any default in the payment of any premium by the Contractor to us for any of the Required Insurances;
- (ii) 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;
- (iii) to notify you of any act or omission, breach or default of the Contractor of which those of our employees directly involved with the placement or administration of the Relevant Insurances actually becomes aware in their capacity as broker to the Contractor acting reasonably which

they consider 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

- (iv) in accordance with our duty to the Contractor, to advise the Contractor of its duty of disclosure to insurers including:
- (v) the types of facts, circumstances and beliefs that should generally be disclosed to insurers; and
- (vi) the obligation not to misrepresent any facts, matters or beliefs to insurers.

**(c) Disclosure Obligations**

- (i) subject to the prior written consent of the Contractor (and we undertake to notify you as soon as reasonably practicable if such consent is withheld) to disclose to insurers all information made available to those of our employees directly involved with the placement of the Relevant Insurances in their capacity as brokers to the Contractor any fact, change of circumstances or occurrence made known to such employees which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers (in accordance with the Contractor's duty of disclosure 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
- (ii) 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 City Council 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 obligations set out in paragraph 4(c)(i) 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 City Council having the force of law or to information which is in the public domain.

**(d) Administrative Obligations**

- (i) 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 all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;
- (ii) subject to our lien over the Policies for premiums and/or commissions due, to supply to the City Council and/or its insurance advisers (or the City Council's or its insurance broker's authorised representatives) as soon as reasonably practicable on written request copies of the documents set out in the above paragraph of this letter, and to the extent available, to make available to such persons as soon as reasonably practicable upon the City Council's request the originals of such documents;
- (iii) to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate cleared funds from the Contractor, all such premiums shall be paid to insurers in accordance with the terms of the Required Insurances;
- (iv) to administer the payment of claims from insurers in respect of the Insurances (the "Insurance Claims") including:
  - (A) negotiating settlement of Insurance Claims presented in respect of the Required Insurances;
  - (B) collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurance; and
  - (C) insofar as it is relevant and practicable, liaising with and reporting to the City Council throughout the settlement, payment and administration of such Insurance Claims;

- (v) to advise the City Council as soon as reasonably practicable 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 reasonable opinion as insurance brokers would result in any material reduction in limits or coverage or in any material increase in deductibles, exclusions or exceptions;
- (vi) to advise the City Council in advance, to the extent we are actually aware of in advance of any material change to the terms of, or any lapse, non-renewal and/or cancellation of any policy maintained in respect of the Required Insurances;

**(e) 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 City Council in accordance with the Insurance Review Procedure as set forth in part 6 of schedule 12 (Required Insurances) of the Agreement attached hereto as appendix E. We shall ensure that the information in the Joint Insurance Cost Report is fairly represented, based on the information available to us.

**(f) Notification Details**

Our obligations at paragraph 4 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

**Leeds City Council**

Navigation House , George Mann Road , Leeds, LS11 8DJ, Attention to Dave Purdy

- 5 The undertakings given and obligations set out in this letter are given subject to any liability we may incur to you arising out of or in connection with this letter whether in contract, tort (including but not limited to negligence) or otherwise being limited in aggregate to £5 million.
- 6 All liability we may incur to you, whether in contract, tort (including but not limited to negligence) or otherwise for loss of profit, loss of savings, loss of opportunity or any indirect or consequential loss is hereby expressly excluded.

- 7 No limit of liability shall apply in the case of death or personal injury caused by our negligence, or in respect of any loss caused by our fraud.
- 8 The undertakings given and obligations set out in this letter are given subject to insurers right to cancel the Relevant Insurances, are given solely in our capacity as broker to the Contractor, relate only to the Relevant Insurances and are subject to our continuing appointment as broker to the Contractor. Following termination of such appointment, we are, for the avoidance of doubt and without prejudice to your accrued rights, released from all our ongoing obligations set out in this letter.
- 9 You may not rely on any advice which we have given to the Contractor and we do not represent that any of the Relevant Insurances are suitable or sufficient to meet your needs and you must take steps and advice of your own as you consider necessary in order to protect your own position.
- 10 In the event that this letter is disclosed to any third party, any and all liability howsoever arising to such third party is hereby expressly excluded to the extent permitted in law.
- 11 No person, except you, has any rights arising out of this letter under the Contract (Rights of Third Parties) Act 1999.
- 12 This letter shall be governed by and construed in all respects in accordance with the laws of England and Wales.
- 13 This letter is given by us at the request of the Contractor and with the Contractor's full knowledge and consent as to its terms, who confirms that we are authorised to give and comply with the undertakings and acknowledges that compliance with the undertakings may be in conflict with the interests of the Contractor, as evidenced by the Contractor's signature below.

Yours faithfully

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For and on behalf of Willis Group

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Accepted for and on behalf of the Contractor



**Part 5**  
**Definitions**

**"Revenue"** is defined as the projected Unavoidable Fixed Costs and Senior Debt Service Costs of the Contractor.

**"Senior Debt Service Costs"** shall mean interest and debt service costs incurred in respect of the Senior Financing Agreements less:

- (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"** means the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during the period of indemnity but excluding:

- (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;
- (j) standby or contingent facilities or funds of Senior Debt or equity which the Contractor is entitled to have available;

- (k) payments representing any profits of the Project (to the extent not already excluded in (e) above).

**Part 6**  
**Insurance Premium Risk Sharing**

**1 Definitions**

For the purposes of this schedule 12 (*Required Insurances*), part 6, 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"** means £370,046 being the amount as agreed at the Bid Date and set out in the Base Case which represents the insurance costs (which excludes amounts in respect of insurance premium tax and all brokers' fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each year following the Services Commencement Date, expressed in real terms as at the Bid Date;

**"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 RPIX 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 unavailable; and
  - (iii) the effects of RPIX since the Bid Date;

**"Bid Date"** means 22 September 2010;

**"Business Interruption Cover"** shall bear the meaning ascribed to it in paragraph 2 of part 2 of this schedule 12 (*Required Insurances*);

**"Construction Period Insurance"** means the Required Insurance in respect of the period from the Commencement Date to expiry of the Works Period;

**"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 Working Day following the first 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:

$$\text{Insurance Cost Differential} = (\text{ARIC} - \text{BRIC}) - (\text{PIC})$$

where:

ARIC is the Actual Relevant Insurance Cost

BRIC is the Base Relevant Insurance Cost

PIC is any 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 Contract 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 Period"** means a two year period from 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 part 6 (*Insurance Premium Risk Sharing*) of this schedule 12 (*Required Insurances*);

**"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 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;

**"Project Insurance Change"** 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 specified in part 2 of this schedule 12 (*Required 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 Change 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:

- (a) Construction Period Insurance; and
- (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 Services 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 Contract, the Relevant Insurance Market is in the United Kingdom;

**"Required Insurance"** shall bear the meaning ascribed to it in schedule 1 (*Definitions*) of this Agreement; and

**"RPIX"** shall bear the meaning ascribed to it in schedule 1 (*Definitions*) of this Agreement.

## **2 Insurance Review Procedure**

2.1 This procedure shall be used to determine whether the City Council 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 City Council (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:

(a) the sum(s) insured/limit of indemnity (i.e. rateable factor) for each of the Relevant Insurances;

(b) the premium rate for each of the Relevant Insurances;

(c) 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);

(d) the deductible(s) for each Relevant Insurance;

- (e) details of any claims (paid or reserved) (including incident date, type and quantum) in excess of £25,000, being the amount stated in clause 59.8;
  - 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 City Council (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) Working Days after the Insurance Review Date, delivers to the City Council, 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 City Council shall notify the Contractor in writing within fifteen (15) Working Days whether or not it accepts the Joint Insurance Cost Report including full details of any disagreement. If the City Council does not provide such notification and/or details of any disagreement to the Contractor within fifteen (15) Working Days, the City Council shall be deemed to have accepted the Joint Insurance Cost Report. If the City Council 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) Working Days from the date it was delivered to the City Council, the matter shall be resolved pursuant to clause 62 (*Dispute Resolution*), provided always that references in clause 62 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 City Council 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 City Council 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 thirty (30) days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the City Council 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 Contract, the Parties shall meet with a view to agreeing:

4.1 its application to the Project, taking into account any relevant guidance issued by HM Treasury; and

4.2 how a Portfolio Cost Saving may be accounted for when the index is in use.

**Part 7**  
**Model for City Council Self-Insurance**

1 The City Council and the Contractor agree (subject to paragraph 2 below and if requested by the City Council) to explore in good faith a model for City Council self insurance based upon:

1.1 the City Council 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

1.1.1 property damage insurance (but not where and to the extent that Contractors' "All Risks" Insurance is in force);

1.1.2 business interruption insurance,

and if the City Council so requires delay in start up insurance that applies during the construction phase and insurance against any other risk that the City Council determines;

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;

1.3 a reduction in the Unitary Charge to reflect the self-insurance model agreed upon and all insurance premia savings arising;

1.4 such protections as may be reasonably required by Senior Funders and any Contractor Related Party in consequence of any self-insurance model agreed upon;

1.5 a process for reverting to commercial insurance if required by the City Council;

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 City Council and the Contractor to amend this Agreement and the Project Documents (if required) to reflect such self-insurance model.

- 2 This part 7 shall not, save in relation to the obligation to act in good faith, have legally binding effect.
  
- 3 The Parties acknowledge that in order to comply with the obligation to act in good faith under this part 7 and to develop and implement a model of self insurance under paragraph 2 the Senior Funders may need to procure legal, technical, financial or insurance due diligence, the cost of which, subject as provided below, shall be payable by the City Council. In such event the Contractor shall notify the City Council of such a requirement within ten (10) Working Days of receipt of the City Council request under paragraph 1, and the parties shall agree a budget and capped cost for the due diligence provided that the costs for the due diligence shall not exceed a reasonable amount fully evidenced by the Contractor, and subsequently agreed by the City Council and the Contractor prior to the commencement of such legal, technical, financial or insurance due diligence. The Contractor shall provide such evidence to the City Council in the form of at least two quotes in respect of each of such legal, technical, financial and/or insurance due diligence submitted by reasonably competent advisors and/or consultants. The Contractor and the City Council shall both act reasonably to agreeing a cap for each of such legal, technical, financial or insurance due diligence based on the quotes submitted to the City Council by the Contractor. If the cost for the due diligence does exceed the agreed cap, the Contractor shall be responsible for such additional cost. Where the Contractor does not procure a decision from the Senior Funders within ten (10) Working Days, it shall be deemed that the Senior Funders do not need to procure legal, technical, financial or insurance due diligence and the City Council and Contractor shall proceed with the exploration of a self-insurance model as appropriate. For the avoidance of doubt if the development and implementation of a self-insurance model progresses, and due diligence is required, in stages, then the Contractor may notify the City Council more than once under this sub-clause of such requirement, and the process described in this sub-clause shall apply to each such stage.

## **SCHEDULE 13**

### **City Council's Policies**

1. Leeds City Council Information Sharing Policy dated 28/06/11
2. LCC Policy Statement on Fraud and Corruption dated February 2001
3. LCC Whistle Blowing Policy dated December 2007
4. LeedsWatch Revised Code of Practice (LCC CCTV Policy) dated November 2004
5. Leeds Emergency Planning Policy dated 13/3/09

The following City Council policies should apply additionally for the purpose of provision of Works and Services under the Output Specification only. The Contractor and all Contractor Related Parties are required to endorse and work to the principles, in so far as they are applicable to the Output Specification, set out in the following documents:

1. Vision for Leeds 2011 – 2030
2. Leeds City Priority Plan 2011 – 2015
3. Leeds Core Values - Business Plan 2008-11
4. Council Business Plan 2011 – 2015
5. Home Not Alone - A strategy to meet the housing and support needs of older people in Leeds dated 13/03/09
6. Council Housing Letting Policy 2008 dated 13/03/09
7. Leeds Affordable Warmth Strategy 2007-16
8. Environmental Policy Summary 2007 - 2016 dated 13/03/09
9. Safer Leeds Partnership Plan 2008 - 2011
10. Corporate Customer Care Standards (Customer Services Strategy 2005 - 08) date 13/03/08
11. Equality and Diversity Policy dated 13/03/08

12. Equality and Diversity Position Statement dated 2011
13. Corporate Health & safety policy dated 29/05/08
14. Staff code of conduct dated 29/05/08
15. Raising Concerns Policy
16. Adult and Child Protection policies dated 29/05/08
17. Leeds BME Housing strategy & action plan dated 13/03/08
18. Leeds Housing strategy 2005/06- 2009/10 dated 13/03/08
19. Making the Housing Ladder work - a plan for delivering affordable housing in Leeds (2007-2015) dated 13/03/08
20. Holbeck conservation appraisal dated 13/03/08
21. Holbeck urban village revised planning framework dated 13/03/08
22. Little London Development Framework
23. Beeston Hill & Holbeck Regeneration plan dated 23/11/07
24. Tree Policies
25. LCC Information Governance Policies:
  - a. Acceptable Use of Information and Systems Policy 2011;
  - b. Clear Desk and Clear Screen Policy 2011;
  - c. DIPA Policy 2011;
  - d. FOI Policy 2011;
  - e. Information Security Incident Management Policy 2011;
  - f. Information and Data Quality Policy 2011;
  - g. Information Sharing Policy 2011;

- h. Key IG Messages 2011;
- i. Records Management Policy 2011;
- j. Records Retention and Disposal Policy 2011;
- k. Remote Access Policy 2011;
- l. Remote Working Policy 2011; and
- m. Removable Media and Mobile Computing Policy 2011.



## **SCHEDULE 14**

### **Initial Financing Agreements**

#### **Part 1 - Senior Financing Agreements**

Collateral Deed

Bonds (as defined in the Collateral Deed)

Bond Trust Deed (as defined in the Collateral Deed)

Paying Agency Agreement (as defined in the Collateral Deed)

Bond Subscription Agreement (as defined in the Collateral Deed)

AGM Financial Guarantee (as defined in the Collateral Deed)

AGE Financial Guarantee (as defined in the Collateral Deed)

Supplemental Construction Reserve Guarantees (as defined in the Collateral Deed)

Reimbursement and Indemnity Agreement (as defined in the Collateral Deed)

Bond Proceeds On-Loan Agreement (as defined in the Collateral Deed)

GIC and any guarantees issued pursuant to the GIC (as defined in the Collateral Deed)

Joint Insurance Proceeds Account Agreement (as defined in the Collateral Deed)

ProjectCo Debenture (as defined in the Collateral Deed)

ProjectCo Second Ranking Debenture (as defined in the Collateral Deed)

HoldCo Debenture (as defined in the Collateral Deed)

Issuer Debenture (as defined in the Collateral Deed)

Account Bank Agreement (as defined in the Collateral Deed)

Equity Subscription Agreement (as defined in the Collateral Deed)

Funders' Direct Agreement (as defined in the Collateral Deed)

Building Contract Direct Agreement (as defined in the Collateral Deed)

FM Direct Agreement (as defined in the Collateral Deed)

AGE Financial Guarantee Fee Letter (as defined in the Collateral Deed)

AGM Financial Guarantee Fee Letter (as defined in the Collateral Deed)

The fee letter(s) between the Issuer, the Bond Trustee, the Paying Agent and the Security Trustee in relation to the fees payable to these parties in their capacities as such

Lead Manager Fee Letter (as defined in the Collateral Deed)

Rating Agency Fee Letter (as defined in the Collateral Deed)

Security Trust and Intercreditor Deed (as defined in the Collateral Deed)

## **Part 2 - Subordinated Financing Agreements**

Issuer Subordinated Loan Note (as defined in the Collateral Deed)

Issuer Subordinated Loan Note Instrument (as defined in the Collateral Deed)

HoldCo Subordinated Loan Note (as defined in the Collateral Deed)

HoldCo Subordinated Loan Note Instrument (as defined in the Collateral Deed)

Shareholders' Agreement (as defined in the Collateral Deed)

Equity Proceeds On-Loan Agreement (as defined in the Collateral Deed)

## SCHEDULE 15

### Project Documents

Document	Parties
Building Contract	(1) Contractor (2) Building Contractor
Building Contractor Collateral Warranty	(1) City Council (2) Building Contractor (3) Keepmoat Limited (4) Building Contractor
Building Contractor Parent Company Guarantee	(1) Contractor (2) Building Contractor (3) Keepmoat Limited
Responsive Repairs and Cyclical Maintenance and Renewal Contract	(1) Contractor (2) Responsive Repairs and Cyclical Maintenance and Renewal Contractor
Responsive Repairs and Cyclical Maintenance and Renewal Contractor Collateral Warranty	(1) City Council (2) Contractor (3) Keepmoat Limited (4) Responsive Repairs and Cyclical Maintenance and Renewal Contractor
Responsive Repairs and Cyclical Maintenance and Renewal Contractor Parent Company Guarantee	(1) Contractor (2) Responsive Repairs and Cyclical Maintenance and Renewal Contractor (3) Keepmoat Limited
Building Contractor Loan Agreement	(1) Contractor (2) Building Contractor
Responsive Repairs and Cyclical Maintenance and Renewal Contractor Loan Agreement	(1) Contractor (2) Responsive Repairs and Cyclical Maintenance and Renewal Contractor
Direct Agreement	(1) City Council (2) Agent (3) Contractor

Interface Agreement	(1) Contractor (2) Building Contractor (3) Responsive Repairs and Cyclical Maintenance and Renewal Contractor
Independent Certifier's Deed of Appointment	(1) Contractor (2) Independent Certifier (3) City Council
Collateral Warranty from Gillespies LLP (landscape architect) in favour of the City Council	(1) Gillespies LLP (2) City Council (3) Building Contractor
Collateral Warranty from Michael Hyde (architect) and Associates Limited in favour of the City Council	(1) Michael Hyde and Associates Limited (2) City Council (3) Building Contractor
Collateral Warranty from Goodson Associates Limited (consulting civil and structural engineers) in favour of the City Council	(1) Goodson Associates Limited (2) City Council (3) Building Contractor
Collateral Warranties from each of the Principal Building Sub-Contractors in favour of the City Council as required by clause 4.2 ( <i>Collateral Warranties</i> )	

## **SCHEDULE 16**

### **Disclosed Data**

The content of all clarifications and responses to clarifications both sent to and received from the Contractor or the City Council, all title documents which were provided to the Contractor in hard copy (or hard copy and electronic copy) and any other documents which were provided by the City Council to the Contractor in hard copy (or hard copy and electronic copy).

## SCHEDULE 17

### Housing Management Functions

1. The maintenance of City Council housing, City Council garages, City Council land and other assets as agreed with the City Council to facilitate the day to day maintenance of City Council housing within the PFI area (in this schedule 17 (*Housing Management Functions*) collectively called "**Housing Assets**")
2. The repair and maintenance, whether responsive or major, of the Housing Assets
3. The repair inspection process relating to the Housing Assets
4. The planned and cyclical maintenance of the Housing Assets
5. The modernisation and improvement of the Housing Assets and the responsibility to decant tenants where appropriate
6. The maintenance of stock condition data on the Housing Assets
7. The responsibility to consult with tenants on repairs and improvements to the Housing Assets
8. Clearance of the Housing Assets
9. The delivery of energy efficient responses to repairs and modernisation in relation to such Assets that contributes to the City Council's Best Value Duty
10. To contribute fully to the regeneration policies of the area
11. To contribute to the Leasehold management, with regards to repairs, maintenance and modernisation works and services within the area
12. The maintenance and repair of communal rooms within residential blocks within the area
13. The provision of a caretaking and cleaning service to the communal areas of blocks of flats.
14. The environmental maintenance of the housing estates
15. The letting of contracts in accordance with the terms of this Agreement

16. The provision of financial management, both revenue and capital.
17. The provision of financial and statistical returns as and when directed or requested
18. The provision of reports to tenants about the service
19. The management of employee relations
20. The responsibility to proactively work with local area housing and regeneration arrangements
21. The preparation of Business Plans
22. The management of performance in line with the performance management framework (pursuant to which the City Council monitors ALMOs and which is known as the "Leeds Performance Framework")



































































































## SCHEDULE 19

### Milestones

#### Part 1 - New Build Works

Number of Dwellings - Cumulative	Milestone Date
12	30/09/2014
37	31/12/2014
62	31/03/2015
107	30/06/2015
205	30/09/2015
271	31/12/2015
297	31/03/2016
328	30/06/2016
351	30/09/2016
358	31/12/2016
388	31/03/2017

#### Part 2 - Refurbishment Works (including Ingram Court conversion units)

Number of Dwellings - Cumulative	Milestone Date
342	30/09/2014
425	31/12/2014
488	31/03/2015
719	30/06/2015
866	30/09/2015
1,017	31/12/2015
1,167	31/03/2016
1,241	30/06/2016
1,296	30/09/2016
1,296	31/12/2016
1,296	31/03/2017

## SCHEDULE 20

### Part 1 - Works Procedures - New Build Properties

1. During the carrying out of the Works, the Contractor shall procure that the Building Contractor and any Sub-Contractor shall not use or occupy or permit the Project Sites 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. Not deposit or manufacture or permit to be deposited or manufactured on the Project Sites or any land upon which the Works are being undertaken any materials which are not required for the carrying out of the Works;
3. Not sell or dispose of any earth, clay, sand, gravel, chalk or other material from the Project Sites 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 City Council which shall not be unreasonably withheld;
4. 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;
5. Not permit or suffer the storage of materials or the parking of vehicles in the immediate external vicinity of the boundaries of the Project Sites by the Contractor, the Building Contractor or any Sub-Contractor other than for reasonable periods necessary for loading and unloading or as set out in the Contractor's Proposals;
6. Ensure that all vehicles leaving the Project Sites are adequately cleaned to prevent the deposit of waste materials and debris on the Adjoining Property 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;
7. Not, in breach of any Legislation, permit any oil, grease or deleterious, dangerous, poisonous, explosive or radioactive matter to be discharged from the Project Sites

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 Sites 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;

8. Not gain access to and egress from the Dwellings or Properties except as contemplated by the Contractor's Proposals;
9. Not without the written consent of the City Council erect or permit or suffer to be erected on the Project Sites 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;
10. Not erect or exhibit or permit or suffer to be erected or exhibited on any part of the Project Sites any signs or trade boards save those previously approved in writing by the City Council (such approval not to be unreasonably withheld or delayed); and
11. Take all necessary steps in accordance with Legislation with regard to ensuring the health and safety of all:
  - 11.1 occupants of the Project Sites;
  - 11.2 individuals invited onto the Project Sites; and
  - 11.3 occupants of Adjoining Properties,is not adversely impacted upon by the undertaking of the Works.

## **Part 2 - Works Procedures - Refurbishment Properties**

### **1. THE DWELLINGS**

- 1.1 The Contractor shall not use or enter the Dwellings and/or Properties 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 City Council permit or display advertisements on and surrounding the Dwellings and/or Properties. The size and location of project information boards shall be agreed with the City Council who shall act reasonably in that regard.
- 1.3 The Contractor will be responsible for keeping the approaches and access routes to the Dwellings and/or Properties 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 and/or Properties 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**

On or before the 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 City Council with the Programme of Works in a Gantt chart format 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):

- 2.1.1 phasing of individual packages; and
- 2.1.2 the likely time of undertaking Works to individual Dwellings.

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, highlight progress to date and any divergence from the Programme of Works as updated.

2.2.2 The Contractor's Representative shall inform the City Council'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 City Council may take such photographs of the Works and the Properties 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 use reasonable endeavours to photograph examples of unacceptable workmanship and unsafe working practices insofar as such matters are brought to its attention.

2.3.3 Copies of all such photographs shall be available for inspection on demand and shall be copied to the other Party as soon as practicable.

## **3. PROVISION OF INFORMATION TO THE CITY COUNCIL BY THE CONTRACTOR**

3.1 The Contractor shall on reasonable notice allow the City Council such access during working hours as is reasonably required to the following documents which shall be stored in a location adjacent to the Dwellings and/or Properties or at such other location as previously agreed by the City Council 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;



- 3.1.3 detailed specifications for all building elements and external works;
  - 3.1.4 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;
  - 3.1.5 detailed proposals for drainage and underground services;
  - 3.1.6 room data sheets showing kitchen layouts;
  - 3.1.7 tenant choice of components and finishes;
  - 3.1.8 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);
  - 3.1.9 any technical commissioning together with all test certificates, statutory certificates and other like documents;
  - 3.1.10 progress photographs produced by or for the Contractor;
  - 3.1.11 operation and maintenance manuals and as built drawings;
  - 3.1.12 sufficient plans and sections of the structural and specialist repair elements of the Works; or
  - 3.1.13 the health and safety plan and the health and safety file as defined in the CDM Regulations.
- 3.2 Two copies of the documents referred to at paragraphs 3.1.1 to 3.1.13 shall be provided by the Contractor to the City Council 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. CITY COUNCIL REPORT**

- 4.1 A City Council report will be issued each month to the City Council 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 Contractor Changes requested and approved;
  - 4.1.6 impact of any City Council Change 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.
- 4.2 Where it is agreed that there is a material or significant change in any Programme of Works then the Contractor will issue to the City Council all such revisions of the Programme of Works within five (5) Working Days.
- 4.3 This paragraph does not apply to Responsive Repairs.

## **5. HEALTH AND SAFETY**

### **5.1 Introduction**

5.1.1 The design, construction and carrying out of the Works will be undertaken in accordance with all relevant health and safety Legislation.

5.1.2 The Contractor shall ensure that the Dwellings and/or Properties and all operations of the Dwellings and/or Properties are conducted with due regard to the health and safety and welfare of persons employed upon the Works and visitors to and occupiers of the Properties 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.

5.1.3 The Contractor shall take all reasonable safety and other measures to prevent damage or injury.

## **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.

## **7. FIRES**

No fires shall be lit on the Dwellings, Properties and/or Project Sites 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 Project Sites and/or Properties;
  - 9.1.2 entry on any part of the Project Sites and/or Properties not reasonably required at that stage to undertake any of the Works; and
  - 9.1.3 (where not possible to prevent) minimise nuisance, inconvenience or disturbance to any person including the right of quiet enjoyment of the Tenants and the Leaseholders.
- 9.2 The Contractor shall take all reasonable precautions to prevent any damage to any part of the Properties 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 Dwellings and/or Properties and shall be responsible for any damage resulting from the Works. The Contractor shall make good any damage caused to such items as a result of the Works within a reasonable time scale.
- 9.3 The Contractor shall:
- 9.3.1 take all reasonable measures to minimise the noise levels produced by its operations on the Properties;
  - 9.3.2 use all reasonable endeavours to ensure that in carrying out the Works on the Dwellings and/or Properties:
    - 9.3.2.1 mechanical plant where practicable is electrically powered;
    - 9.3.2.2 noise from compressors used on the Project Sites 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;

9.3.2.3 ancillary pneumatic percussion tools used on the Dwellings and/or Properties are fitted with silencers of a type recommended by the manufacturers of the tools;

9.3.2.4 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

9.3.2.5 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 City Council shall be informed prior to commencement of such activity or use of such plant; and

9.3.3 in relation to the following operations:

9.3.3.1 use of compressors, generators, pneumatic equipment and power tools;

9.3.3.2 drilling/chasing of structure;

9.3.3.3 repetitive noise-producing operations such as pile driving;

9.3.3.4 demolition/movement of debris; and

9.3.3.5 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, inform Tenants and Leaseholders prior to the commencement of the operation. If the City Council 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 City Council 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 Dwellings and/or Properties. 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 Properties caused by the carrying out of the Works.

## **11. WORKING HOURS**

- 11.1 Subject to paragraph 11.2 the Contractor shall limit site operations to Monday to Friday 0800 - 1800, Saturday by prior agreement 0800 - 1300.
- 11.2 If the Contractor wishes to work hours in excess of Monday to Friday 0800 - 1800, Saturday by prior agreement 0800 - 1300 it shall obtain the prior written consent of the City Council 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 City Council 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 Initial Refurbishment Works, the Dwellings and the public and for all persons lawfully using the Dwellings and/or Properties 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 the Properties and the public highway within or adjacent to the Properties and maintain the Properties 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 City Council 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 20.2 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 City Council and the Contractor shall notify the City Council forthwith of any such items are found on the Properties or other City Council owned land.

## **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 IEE. 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 ie 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 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;
- 16.1.10the 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;
- 16.1.11facilities 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;
- 16.1.12hot water supplies are available at all times and if unavoidably suspended then temporary facilities are provided;
- 16.1.13kitchen sink and WC are kept in operation unless replacements are ready to be installed with immediate substitution and minimum discontinuity;
- 16.1.14the 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;
- 16.1.15heat 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 Working Day;
- 16.1.18 communal and circulation areas are kept free from hazards at all times to the extent related to the Works.
- 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 Working 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 the anticipated period 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 Working 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 to the Tenant in such a manner that the Tenant or the carer of an At Risk Tenant can readily understand them.

**SCHEDULE 21**

**NOT USED**

## SCHEDULE 22

### Equality Requirements

#### 1. Racial Discrimination and the Promotion of Race Equality

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 a disability or by a 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 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 on 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 City Council'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 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

**SCHEDULE 23**

**Commercially Sensitive Information**

**Part 1**

<b>COLUMN 1</b>	<b>COLUMN 2</b>
<b>Commercially Sensitive Contract Provisions</b>	<b>For the period ending on the date below:</b>
<p>The following provisions of the Agreement:</p> <p>clause 27.1 (<i>Market Testing Review Dates</i>) the dates identifying the Market Testing Review Dates</p> <p>clause 30.2.1 to 30.2.3 (<i>Contractor Contribution Rate</i>) to the extent that the same is not available to the public at Companies House or otherwise</p> <p>clause 35.3 (Annual Service Report) - The adjustment to the Unitary Charge</p> <p>clause 66.5.2 (<i>Change in Ownership</i>) - The additional amendments made to this clause against the standard form project agreement forming part of the Housing Procurement Pack dated November 2007 ("<b>Standard Form</b>" for the purposes of this schedule 23 (<i>Commercially Sensitive information</i>)).</p> <p>clause 67.5.2 (Amendments to Logic and/or Formulae) - the base minimum ratios</p>	Contract Period.
<p>The following definitions to schedule 1 (<i>Definitions</i>) of the Project Agreement:</p> <p>Account Bank - to the extent the definition includes an account number</p> <p>Agreed Abatement</p> <p>Base Case Equity IRR</p> <p>Base Unitary Charge</p> <p>Full Base Leasehold Dwelling Charge - the amount only</p>	Contract Period.



COLUMN 1	COLUMN 2
<b>Commercially Sensitive Contract Provisions</b>	<b>For the period ending on the date below:</b>
<p>Full Base Rented Dwelling Charge - the amount only</p> <p>High Value Changes - the amount only</p> <p>Holdco - to the extent that it identifies the shareholders in Holdco</p> <p>Interim Base Leasehold Dwelling Charge - the amount only</p> <p>Interim Base Rented Dwelling Charge - the amount only</p> <p>Joint Insurance Account - to the extent that it identifies an account number</p> <p>Low Value Change - the amount of the threshold only</p> <p>Medium Value Changes- the amount of the threshold only.</p> <p>Minor Adaptation - the amount of the threshold only.</p> <p>Performance Calibration Factor</p> <p>Relief Event - paragraphs (h), (i) and (j) - amendments to the Standard Form which are specific to this Project</p> <p>Sub-Contractor Breakage Costs - the amount of the thresholds only</p> <p>Subordinated Lender</p> <p>Termination Date Discount Rate Threshold Equity IRR</p>	
schedule 4 ( <i>Change In Law</i> )	Contract Period
<p>The following sensitive information and pricing information in schedule 5 (<i>Payment Mechanism</i>):</p> <p>the percentages used to calculated the values of FBRPC in paragraph 2.7;</p> <p>the table setting out the ratchet factors in paragraph 3.13;</p> <p>subparagraph (b) of paragraph 3.13;</p>	12 years from the date of this Agreement.

COLUMN 1	COLUMN 2
<p><b>Commercially Sensitive Contract Provisions</b></p>	<p><b>For the period ending on the date below:</b></p>
<p>the rectification period referred to in subparagraph (d) of paragraph 3.13;</p> <p>the rectification calibration factor referred to in subparagraph (d) of paragraph 4.2;</p> <p>the thresholds for the Failure Types, referred to in subparagraph (b) of paragraph 4.3;</p> <p>the table setting out the performance ratchet factors in paragraph 4.4;</p> <p>the amount of reporting deduction referred to in paragraph (a) of part 5;</p> <p>the performance deduction cap set out in paragraph 7.2;</p> <p>the level of Change Protocol Deduction set out in paragraphs 9.2 and 9.3; and</p> <p>each appendix to schedule 5 (<i>Payment Mechanism</i>).</p>	
<p>schedule 6 - part 1 - Building Contractor's Collateral Warranty</p> <p>The following provisions of part 1 of schedule 6 :</p> <p>clause 5 (<i>Professional Indemnity Insurance</i>) - the figures in this clause.</p> <p>clause 6.1.5 (<i>Guarantee</i>) - the amendments made against the Standard Form.</p> <p>clause 7.1 (<i>Step in Rights</i>) - the amendments made against the Standard Form.</p> <p>clause 8 (<i>Assignment</i>) - the amendments made against the Standard Form.</p> <p>clause 10 (<i>No Variation to the Building Contract without City Council's Consent</i>) - the amendments made against the Standard Form.</p>	<p>12 years from the date of this Agreement.</p>
<p>schedule 6 - part 2 - Building Sub-Contractor and Professional Team's Collateral Warranty</p>	<p>12 years from the date of this Agreement.</p>

COLUMN 1	COLUMN 2
<b>Commercially Sensitive Contract Provisions</b>	<b>For the period ending on the date below:</b>
<p>The following provisions of part 2 of schedule 6:</p> <p>clause 2.6 (<i>Warranty</i>) - the amendments made against the Standard Form.</p> <p>clause 5 (<i>Professional Indemnity Insurance</i>) - the figures in this clause.</p> <p>clause 6.1.5 (<i>Guarantee</i>) - the amendments made against the Standard Form.</p> <p>clause 8 (<i>Assignment</i>) - the amendments made against the Standard Form.</p>	
<p>schedule 6 - part 3 - Responsive, Repairs and Cyclical Maintenance and Renewal Contractor's Collateral Warranty</p> <p>The following provisions of part 3 of schedule 6:</p> <p>clause 2.6 (<i>Warranty</i>) - the amendments made against the Standard Form.</p> <p>clause 5 (<i>Professional Indemnity Insurance</i>) - the figures in this clause.</p> <p>clause 6.1.5 (<i>Guarantee</i>) - the amendments made against the Standard Form.</p> <p>clause 8 (<i>Assignment</i>) - the amendments made against the Standard Form.</p> <p>clause 10 (<i>No Variation to Services Contract without City Council's Consent</i>) - the amendments made against the Standard Form.</p>	12 years from the date of this Agreement.
<p>schedule 10 (<i>Warranted Data</i>) -</p> <p>Part 1 and related appendices to the extent that the information relates to individual Tenants or Leaseholders</p> <p>The employee details in part 2</p> <p>The details set out under the heading Additional Employee Information</p>	Indefinite

COLUMN 1	COLUMN 2
<b>Commercially Sensitive Contract Provisions</b>	<b>For the period ending on the date below:</b>
The proposed workforce information set out in part 4.	
schedule 26 ( <i>Change Protocol</i> )	Contract Period.
The following parts of the Independent Certifier's Deed of Appointment:  schedule 2 - Fee; and  schedule 4 - Warranties.	12 years from the date of this Agreement.
Those provisions in relation to the make-up of the construction price set out in schedule 5 ( <i>Payment Mechanism</i> ) of the Building Contract (including drawdowns, payment programmes etc), clause 9B of the Building Contract (including caps on liability and liquidated damages, rates etc) together with all financial information relating to the surety and/or security package.	12 years from the date of this Agreement.
Those provisions in relation to the make-up of the price for the provision of the Services set out in schedule 5 ( <i>Payment Mechanism</i> ) of the Responsive Repairs and Cyclical Maintenance and Renewal Contract, clause 87 of the Responsive Repairs and Cyclical Maintenance and Renewal Contract (including caps on liability and liquidated damages, rates etc) together with all financial Information relating to the surety and/or security package.	12 years from the date of this Agreement
Any of the above documents or provisions to the extent repeated in any Project Document other than the relevant document stated above.	Relevant period stated above.

**Part 2**

<b>COLUMN 1</b>	<b>COLUMN 2</b>
<b>Commercially Sensitive Material</b>	<b>For the period ending on the date below:</b>
Any books of accounts kept in accordance with clause 76.2 of the Agreement, and disclosed to the City Council.	Contract Period
Any financial models provided by the Contractor in relation to this Agreement including those provided prior to Financial Close.	Contract Period
<p>The following financial information contained in the Financing Agreements:</p> <ul style="list-style-type: none"> <li>(i) details of any amounts advanced or to be advanced;</li> <li>(ii) details of any fees and expenses payable under the Financing Agreements;</li> <li>(iii) details of the margin payable under the Financing Agreements;</li> <li>(iv) information relating to the financial cover ratios under the Financing Agreements; and</li> <li>(v) information relating to any Event of Default (as defined in the Financing Agreements) save where such Information is otherwise disclosed under the terms of the Project Agreement.</li> </ul>	Contract Period
Caps on liability of the Contractor, the Building Contractor and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor set out in the Sub-Contracts and the Interface Agreement (as defined in the Senior Financing Agreement).	Contract Period
Financial terms sheets and related funding information including any funder pricing.	Contract Period
Pricing information, discounting information, levels of service credits and information regarding future development or products in respect of Contractor, the Building Contractor and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor.	Contract Period.

COLUMN 1	COLUMN 2
<b>Commercially Sensitive Material</b>	<b>For the period ending on the date below:</b>
Any of the above documents or provisions to the extent repeated in any Project Document other than the relevant document stated above.	Relevant period stated above.

**SCHEDULE 24**

**Part 1  
Admissions Agreement**

DATED \_\_\_\_\_ 2013

**CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL**

And

**LEEDS CITY COUNCIL**

And

**KEEPMOAT PROPERTY SERVICES LTD**

**ADMISSION AGREEMENT**

**FOR ADMISSION TO THE WEST YORKSHIRE PENSION FUND**

under the provisions of the Local Government

Pension Scheme (Administration) Regulations 2008 (as amended)

Ref:

City Solicitor  
Legal and Democratic Services  
City of Bradford Metropolitan District Council  
City Hall  
Bradford  
BD1 1HY

**THIS AGREEMENT** is made on the                      day of                      2013

**BETWEEN:**

- (1) **CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL** of City Hall, Bradford BD1 1HY (the “Administering Authority”); and
- (2) **LEEDS CITY COUNCIL** of Civic Hall, Calverley Street, Leeds LS1 1UR (the “Scheme Employer”)
- (3) **KEEPMOAT PROPERTY SERVICES LTD** (company registered number 06182287) whose registered office is at Neo Court, Knowsthorpe Lane, Cross Green Industrial Estate Leeds LS9 0PF (the “Transferee Admission Body”)

**WHEREAS:**

- (1) The Administering Authority is an Administering Authority within the meaning of the Local Government Pension Scheme (Administration) Regulations 2008 (as amended) (the “Regulations”) and administers the Local Government Pension Scheme (the “Scheme”) and maintains the West Yorkshire Pension Fund (the “Pension Fund”).
- (2) The “Scheme Employer” is a Scheme Employer within the meaning of the Regulations.
- (3) The Transferee Admission Body is a body, other than a community admission body, that is providing, or will provide, with effect from **30 September 2013** a service or assets in connection with the exercise of a function of a Scheme employer as a result of the transfer of the service or assets by means of a contract or other arrangement (the “Contract”) within the meaning of Regulation 6 (2) (a) (i) of the Regulations.
- (4) The Scheme Employer has entered into a contract (the “Contract”) dated                      with **Sustainable Communities for Leeds Limited** (the “Main Contractor”) for Little London, Beeston Hill and Holbeck Housing Revenue Account (HRA) Area PFI Project. Certain services contained in the Contract are the subject of a sub-contract (the



“Sub-Contract”) dated between the Main Contractor and the Transferee Admission Body.

- (5) The Administering Authority, the Scheme Employer and the Transferee Admission Body have agreed to enter into this Agreement to enable the Eligible Employees (as defined in Clause 1.1) to be members of the Scheme and to participate in the Pension Fund.

**NOW IT IS HEREBY AGREED** as follows:

**1. INTERPRETATION**

1.1 “Eligible Employees” means the employees employed by the Scheme Employer and who either:

1.1.1 are active members of the Scheme immediately before their employment transfers to the Transferee Admission Body on or around 30 September and identified in writing in a separate schedule by the parties hereto; or

1.1.2 are otherwise identified in the separate schedule referred to in clause 1.1.1 and are subsequently nominated by the Transferee Admission Body;

for so long as they are employed in connection with the Contract AND ALWAYS PROVIDED THAT:

1.1.3 the employee is not a member of another occupational pension scheme (within the meaning of Section 150 (5) of the Finance Act 2004).

1.1.4 the employee otherwise satisfies the requirements of the Regulations appertaining to eligibility for membership of the Scheme.

1.2 For the purposes of this Agreement, the words “employed in connection with” shall mean those employees of the Transferee Admission Body who are employed in connection with the provision of the service or assets referred to in Regulation 6 (2) of the Regulations.

1.3 “Business Day” means any day other than a Saturday or Sunday or a Public or Bank Holiday in England.

- 1.4 Save as aforesaid the words and expressions used in this Agreement shall have the same respective meanings as in the Regulations unless the context otherwise requires.
- 1.5 In this Agreement where the context so admits:-
- 1.5.1 words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations, unincorporated associations and partnerships;
- 1.5.2 reference to any statutory provisions shall be deemed to include reference to any such provisions as from time to time amended, varied, replaced, extended or re-enacted and any others or regulations under such provisions unless the context otherwise requires;
- 1.5.3 reference to Clauses or Schedules shall be deemed to be references to a Clause or a Schedule to this Agreement and references to a sub-Clause shall be deemed to be a reference to a sub-Clause of the Clause in which the reference appears; and
- 1.5.4 headings are included for ease of reference only and shall not affect this Agreement or its interpretation.

## 2. **COMMENCEMENT DATE**

This Agreement shall be deemed to come into effect on the **30 September 2013**

## 3. **ADMISSION**

The Administering Authority shall as from 30 September 2013 or in the case of any employee nominated by the Transferee Admission Body under Clause 1.1.2, from such date as notified) permit the Eligible Employees to be members of the Scheme and to participate as active members of the Pension Fund.

## 4. **PARTICIPATION**

- 4.1 The provisions of the Regulations shall apply for determining the rights and obligations of and the action which is to be taken by each party to this Agreement

and for the transmission of information between them and each party hereby undertakes with the other to take such action promptly

- 4.2 The provisions of the Regulations shall apply to the Eligible Employees in the same way as if the Transferee Admission Body were a Scheme Employer within the meaning of the Regulations.
- 4.3 The Transferee Admission Body warrants and represents to the Administering Authority and to the Scheme Employer that every Eligible Employee is employed in connection with, as defined in Clause 1.2, the Contract for the purposes of this Agreement.
- 4.4 The Transferee Admission Body undertakes that it will promptly notify the Administering Authority and the Scheme Employer in writing if any Eligible Employee ceases to be employed in connection with the Contract or ceases to be an Eligible Employee in consequence of failing to satisfy Sub-Clause 1.1. Such an employee shall cease to be eligible to be an active member of the Scheme. In any event, the Transferee Admission Body shall annually, on the anniversary of the commencement of this Agreement, send to the Administering Authority a Schedule of all Eligible Employees who remain eligible to be an active member of the Scheme.

## 5. **PAYMENTS**

- 5.1 The Transferee Admission Body shall pay to the Administering Authority for credit to the Pension Fund such contributions and payments as are due under the Regulations in respect of the Eligible Employees.
  - 5.2 The Transferee Admission Body shall pay the amounts due under clause 5.1 on a monthly basis in arrears no later than the date specified in regulations made under the Pensions Act 1995.
- 5.3 Any Eligible Employees' AVCs or SCAVCs are to be paid direct to such approved AVC body and/or AVC insurance company selected by the Administering Authority and notified to the Transferee Admission Body as soon as reasonably practicable following the deduction of such contributions. In any event such contributions shall be paid no later than the date specified in regulations made under the Pensions Act 1995.

5.4 The Transferee Admission Body shall pay to the Administering Authority for credit to the Pension Fund any revised contributions due under Sub-Clause 7.2.2 within 30 days of receipt of a written request from the Administering Authority.

5.5 Where the Transferee Admission Body certifies that:-

5.5.1 an Eligible Employee who is aged 55 or more is retiring by reason of redundancy or in the interests of efficiency; or

5.5.2 an Eligible Employee is retiring voluntarily with the consent of the Transferee Admission Body on or after age 55 and before age 60; or

5.5.3 an Eligible Employee is retiring on the grounds that his ill health or infirmity of mind or body renders him permanently incapable of discharging the duties of his current employment and that he has a reduced likelihood of obtaining any gainful employment before his normal retirement age; or

5.5.4 the deferred benefit of an Eligible Employee is brought into payment with the consent of the Transferee Admission Body on or after age 55 and before age 60; or

5.5.5 the deferred benefit of an Eligible Employee is brought into payment on the grounds he has become permanently incapable of discharging efficiently the duties of his former employment because of ill-health or infirmity of mind or body; or

5.5.6 an Eligible Employee who is aged 55 or more is granted payment of flexible retirement benefits following a reduction in hours or grade,

and immediate benefits are payable under the Regulations, then the Transferee Admission Body shall pay to the Administering Authority for credit to the Pension Fund the sum notified to them in writing by the Administering Authority as representing the actuarial strain on the Pension Fund, as certified by an actuary appointed by the Administering Authority, of the immediate payment of benefits but only, in the case of sub-Clauses 5.5.3, 5.5.4, or 5.5.5, to the extent that the strain is not met through the Transferee Admission Body's employer contribution rate, such sum to be paid within 30 days of receipt of the written notification or by annual instalments, subject to an interest charge, over such longer period as the

Administering Authority and the Transferee Admission Body may agree to, subject to the period not exceeding the remaining period of the Contract.

5.6 Any financial penalty incurred by the Pension Fund and/or the Administering Authority arising from the failure of the Transferee Admission Body to comply with the terms of this Agreement shall be repaid to the Pension Fund by the Transferee Admission Body within 30 days of receiving a written request from the Administering Authority.

5.7 If any sum payable under the Regulations or this Agreement by the Transferee Admission Body to the Administering Authority or to the Pension Fund remains unpaid at the end of one month after the date on which it becomes due under this Agreement or the Regulations the Administering Authority shall require the Transferee Admission Body to pay interest calculated in accordance with the Regulations on the amount remaining unpaid.

5.8 The Scheme Employer and the Transferee Admission Body hereby agree (notwithstanding any terms to the contrary that may be contained in the Contract or the Sub-Contract) that

(a) if the Transferee Admission Body fails to pay any sum due to the Administering Authority or Pension Fund by virtue of the Regulations or this Agreement by the date on which that sum becomes due, and

(b) the Administering Authority informs the Scheme Employer in writing that

(i) such failure has occurred and

(ii) the following provisions of this clause 5.8 shall have effect and

(iii) stipulating a time-limit within which the said provisions must be exercised;

then the Scheme Employer shall take such steps as are necessary (either by withholding payment under the Contract or by causing the withholding of payment under the Sub-Contract, or such other means) to offset from any payments due to the Transferee Admission Body a sum equivalent to that mentioned in clause 5.8(a) and shall pay that amount and any interest due in accordance with clause 5.7 to the Administering Authority for credit to the Pension Fund PROVIDED ALWAYS THAT it shall be the Scheme Employer's responsibility to ensure that the Administering

Authority shall receive the outstanding amount by the date mentioned in the notice served under clause 5.8(b)

## 6. TRANSFeree ADMISSION BODY'S UNDERTAKINGS

The Transferee Admission Body undertakes:

- 6.1 to provide or procure to be provided such information relating to the Transferee Admission Body's participation in the Pension Fund and the Eligible Employee's participation in the Scheme as is reasonably required by the Administering Authority;
- 6.2 to provide or procure to be provided to the Administering Authority such information as is reasonably required by the Administering Authority in relation to the pay and final pay (as defined in the Regulations) of each Eligible Employee.
- 6.3 to comply with the reasonable requests of the Administering Authority to enable it to comply with the requirements of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996/1655);
- 6.4 to adopt the practices and procedures relating to the operation of the Scheme set out in the Regulations and any guidance published or distributed by the Administering Authority and issued to the Transferee Admission Body
- 6.5 to formulate and publish within 3 months of the date referred to in Clause 2 a Statement concerning the Transferee Admission Body's policy on the exercise of its discretions under Regulations 12, 13, 18 and 30 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and to keep that policy under review. The Transferee Admission Body shall send a copy of any amended Statement to the Administering Authority and the Scheme Employer;
- 6.6 to notify the Administering Authority and the Scheme Employer of each occasion on which it exercises a discretion under the Regulations and the manner in which it exercises that discretion;
- 6.7 without prejudice to the requirements of the Regulations and any guidance published or distributed by the Administering Authority and issued to the

Transferee Admission Body, to notify forthwith the Administering Authority and the Scheme Employer in writing of any material change in the terms and conditions of employment of any of the Eligible Employees which affect entitlement to benefits under the Regulations and of any termination of employment of any of the Eligible Employees by virtue of redundancy or in the interests of efficiency or for any other reason;

6.8 that it shall not increase total membership of an Eligible Employee under Regulation 12 or award an additional pension under Regulation 13 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 save to the extent that the appropriate sum is paid to the Administering Authority for credit to the Pension Fund before the expiry of the relevant period within the meaning of the Regulations;

6.9 not to do any act, omission or thing which would affect the status of the Scheme as a registered pension scheme as defined by the Finance Act 2004;

6.10 to notify the Administering Authority and the Scheme Employer immediately of any matter which may affect, or is likely to affect, its participation in the Scheme and the Pension Fund and give immediate notice to the Administering Authority and the Scheme Employer of any actual or proposed change in its status which may give rise to a termination of the Contract including, but not limited to, takeover, reconstruction or amalgamation, liquidation or receivership and a change in the nature of its business or constitution.

## **7. PERIODIC VALUATIONS**

7.1 The Administering Authority may periodically obtain from an actuary a certificate specifying, in the case of the Transferee Admission Body, the percentage or amount by which, in the actuary's opinion, the contribution rate at the common rate or any prior individual adjustment within the meaning of the Regulations should be increased or reduced. This is with a view to ensuring that, as far as is reasonably possible, the value of assets of the Pension Fund in respect of Eligible Employees and former Eligible Employees under the Agreement is neither materially more nor materially less than the anticipated liabilities of the Pension Fund in respect of the said Eligible Employees at the date the Contract or this Agreement is due to end.

7.2 When this Agreement is terminated the Administering Authority must obtain:-

7.2.1 an actuarial valuation as at the termination date of the liabilities of the Transferee Admission Body under the Pension Fund in respect of Eligible Employees and former Eligible Employees, under the Agreement, of the Transferee Admission Body; and

7.2.2 a revision of any rates and adjustments certificate within the meaning of the Regulations showing the revised contributions due from the Transferee Admission Body, based on that actuarial valuation.

## 8. TERMINATION

8.1 Subject to Clauses 8.2 and 8.3 this Agreement shall terminate at the end of the notice period upon the Administering Authority or the Scheme Employer giving a minimum of three months' written notice to terminate this Agreement to the other parties to this Agreement, but such notice shall not have effect until either:

8.1.1 a broadly comparable occupational pension scheme (as determined in the opinion of the Government Actuary's Department in accordance with the statement of practice or guidance in effect at that time); or

8.1.2 a Contractor Scheme (as defined in the Contract);

is made available to the Eligible Employees who are active members of the Scheme at the date of termination of this Agreement

8.2 This Agreement shall automatically terminate on the earlier of the date of:-

8.2.1 the expiry or earlier termination of the Contract; or

8.2.2 the date the Transferee Admission Body ceases to be an admission body for the purposes of the Regulations.

8.3 This Agreement may be terminated with immediate effect by the Administering Authority by notice in writing to the Transferee Admission Body in the event of:

8.3.1 any breach by the Transferee Admission Body of any of its obligations under this Agreement PROVIDED THAT if the breach is capable of remedy the Administering Authority shall first afford to the Transferee Admission Body the



opportunity of remedying that breach within such reasonable period as the Administering Authority may specify;

8.3.2 the insolvency, winding-up or liquidation of the Transferee Admission Body;

8.3.3 the failure by the Transferee Admission Body to pay any sums due to the Administering Authority or to the Pension Fund within seven days of the periods specified in Clauses 5.2, 5.5 and 5.6 or, in any other case, within 37 days of receipt of a notice from the Administering Authority requiring them to do so;

8.3.4 the failure by the Transferee Admission Body to renew or adjust the level of a bond or indemnity in accordance with Clause 9.4 or 9.5.

8.4 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination. The clauses of this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination, including (but for the avoidance of doubt not limited to) Clause 5.

## 9. **BOND OR INDEMNITY**

9.1 In accordance with Regulation 7(3) of the Regulations, the Transferee Admission Body warrants to the Administering Authority that it has carried out an assessment, taking account of actuarial advice, of the level of risk arising on premature termination of the provision of the services or assets by reason of the insolvency, winding up or liquidation of the Transferee Admission Body

9.2 The level of risk exposure arising on the premature termination of the Contract has, prior to the commencement date specified in Clause 2, been actuarially assessed to the satisfaction of the Scheme Employer as being the sum of £3,800.

9.3 The Transferee Admission Body warrants that it has or will have provided by the commencement date specified in Clause 2 a bond or an indemnity in an approved form with Lloyds TSB Bank plc. (registered Office: 25 Gresham Street, London EC2V 7HN registered in England and Wales, number 2065), being a person or firm within the meaning of Regulation 7(4) of the Regulations for the sum of £3,800 in respect of the risk exposure specified in Clause 9.2 and that the bond is in place.

9.4 Where the bond or the indemnity under Clause 9.3 is not for the full period of the Contract the Transferee Admission Body shall renew the bond or the indemnity to meet the level of risk exposure which has, prior to the renewal of the bond or the indemnity, been actuarially assessed to the satisfaction of the Scheme Employer.

9.5 The sum of the bond or the indemnity shall be reviewed at 12 monthly intervals from the commencement date specified in Clause 2 to ensure that it still covers a level of risk exposure which has been actuarially assessed to the satisfaction of the Scheme Employer. In the event that such actuarial assessment reveals that the level of risk exposure should be revised, the Transferee Admission Body shall revise the level of or renew the bond or the indemnity to meet the level of risk exposure that has been assessed to the satisfaction of the Scheme Employer.

## 10. **NOTICES**

Any notice to be given under this Agreement shall be in writing and shall be deemed to be sufficiently served if delivered by hand or sent by prepaid first class post to the registered office of the Transferee Admission Body or the headquarters address of the Administering Authority or the headquarters address of the Scheme Employer or the office of the Secretary of State (as the case may be) and shall be deemed to have been duly given or made:-

- (i) if delivered by hand, upon delivery at the address provided for in this Clause 10 unless such delivery occurs on a day which is not a Business Day or after 4pm on a Business Day, in which case it will be deemed to have been given at 9am on the next Business Day; or
- (ii) if sent by prepaid first class post on the second Business Day after the date of posting.

## 11. **PUBLIC INSPECTION**

This Agreement shall be made available for public inspection by the Administering Authority and the Scheme Employer at their respective headquarters address.

## 12. **DATA PROTECTION**

- 12.1 The Transferee Admission Body shall comply with its obligations under the Data Protection Act 1998 (“the 1998 Act”) and the Computer Misuse Act 1990 insofar as performance of the Agreement gives rise to obligations under those Acts.
- 12.2 The Transferee Admission Body shall process the Personal Data, as defined under 1998 Act, relating to the Eligible Employees only to the extent, and in such a manner, as is necessary for the provision of the performance of the Agreement or as is required by law or any regulatory body.
- 12.3 The Transferee Admission Body shall take reasonable steps to implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data having regard to the nature of the Personal Data which is to be protected.
- 12.4 Each party to this Agreement shall ensure that it does nothing knowingly or negligently which places any party to this Agreement in breach of their respective obligations under the 1998 Act.
- 12.5 The Administering Authority shall notify the Transferee Admission Body in writing and the Transferee Admission Body shall notify the Administering Authority in writing of any data breach of any Personal Data relating to the performance of the Agreement within 5 Business Days of the party against whom the breach has been committed becoming aware of the breach occurring.

13. **APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

14. **RIGHTS OF THIRD PARTIES**

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and the terms of that Act are hereby excluded

**IN WITNESS** whereof the parties have executed this Agreement as a Deed the day and year first before written

The Common Seal of City of Bradford  
Metropolitan District Council was  
hereto affixed in the presence of:

Authorised by Assistant Director Corporate Services (City Solicitor)

Executed as a Deed by affixing the  
Common Seal of Leeds City Council  
in the presence of:

Name .....

Signature .....

Job Title .....

(Public Private Partnerships Unit)

Signed on behalf of the Transferee Admission Body  
namely Keepmoat Property Services Ltd

acting by a Director and its Secretary/  
two Directors whose signatures are  
here subscribed:

namely:

Signature ..... Director

and namely:

Signature ..... Director/Secretary

**Part 2**  
**Pensions Bond**

**Dated 20[date]**

**[name of Guarantor]**

**and**

**LEEDS CITY COUNCIL**

**and**

**CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL**

**AGREEMENT FOR A BOND AND INDEMNITY**  
**IN RESPECT OF SUMS DUE UNDER AN ADMISSION AGREEMENT ARISING FROM**  
**THE PREMATURE TERMINATION OF THE CONTRACT**

Ref:  
Assistant Director Corporate Services (City Solicitor)  
Legal and Democratic Services  
City Hall  
Bradford  
BD11HY

**Note:** *The WYPF form of bond as at Financial Close has been provided for information purposes however the parties acknowledge that an alternative or amended form may be used either upon agreement between the parties or where this is a requirement of the WYPF.*

**THIS BOND AND INDEMNITY** is made the day of 2[**date**]

**BETWEEN**

- (1) [**name**] of/whose head/registered office is at [**address**] (the "**Guarantor**"); and
- (2) **LEEDS CITY COUNCIL** of **Civic Hall, Leeds LS1 1UR** (the "**Transferee Admission Body**"); and
- (3) **CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL** of **City Hall Bradford West Yorkshire BD1 1HY** (the "**Administering Authority**").

**WHEREAS**

- (1) The Administering Authority is an Administering Authority within the meaning of the Local Government Pension Scheme (Administration) Regulations 2008 (as amended) (the "**Regulations**")
- (2) The Transferee Admission Body is a body providing services or assets referred to in a Contract, within the meaning of Regulation 6 of the Regulations, in an Agreement with [**name**] (hereafter referred to as the "**Scheme Employer**") dated the [**day**] day of [**month**] [**date**] which expires on the [**day**] day of [**month**] [**date**] (hereafter referred to as the "**Contract**").
- (3) The Transferee Admission Body has entered into an Agreement (hereafter called the "**Admission Agreement**") with the Administering Authority to admit employees of the Transferee Admission Body to participate in the benefits of the Scheme administered by the Administering Authority being those persons who are employed in connection with the provision of services or assets referred to in the Contract (hereafter referred to as the "**Employees**").
- (4) The Scheme Employer is an Authority within the meaning of the Regulations and has carried out its obligations under regulation 6(5)
- (5) The Guarantor is an authorised insurer or a relevant institution within the meaning of Regulation 6 of the Regulations and has agreed to give this Bond and Indemnity in accordance with the Regulations in order to meet a level of risk exposure arising on any premature termination of the Contract which has been actuarially assessed to the satisfaction of the Scheme Employer.

- (6) The Administering Authority has agreed to admit to the Scheme the Transferee Admission Body's eligible employees subject to the Guarantor providing a Bond and Indemnity in respect of the Transferee Admission Body's liability to pay sums due to the Administering Authority under the Regulations or the Admission Agreement by virtue of the premature termination of the Contract.
- (7) The Guarantor has agreed to provide a Bond and Indemnity in the terms set out below guaranteeing performance of the Transferee Admission Body's obligations under the Admission Agreement in the event of the premature termination of the Contract.

**NOW IT IS HEREBY AGREED AND DECLARED** by the parties as follows:

1. The expressions used in this Agreement unless the context otherwise requires have the same meanings as in the Regulations
2. The Guarantor hereby covenants with the Administering Authority that:
  - (a) in the event of any default by the Transferee Admission Body in paying or reimbursing to the Administering Authority any sum or sums payable by the Transferee Admission Body to the Administering Authority under the Regulations or the Admission Agreement by virtue of the premature termination of the Contract, and
  - (b) the Administering Authority certifying to the Guarantor in writing the amount of the sum due,

it, the Guarantor, shall forthwith pay the said sum to the Administering Authority and will indemnify the Administering Authority from and against all losses and costs whatsoever which may be incurred by the Administering Authority by reason of any default on the part of the Transferee Admission Body in making payment to the Administering Authority as aforesaid up to the limit of the maximum amount of indemnity arising on premature termination of the Contract actuarially assessed on behalf of the Scheme Employer. The sum payable under this clause to be limited to £ ***rélevant amount to be inserted in accordance with the Form of Final Tender*** such limit to be assessed, to the satisfaction of the Scheme Employer, by the said actuary prior to commencement of the Admission Agreement and annually on the anniversary of its commencement thereafter.



3. Any sum or sums payable by the Transferee Admission Body to the Administering Authority under the Admission Agreement and under this Bond and Indemnity shall include a reference to any sum or sums which would have been due and payable apart from the dissolution or liquidation of the Transferee Admission Body or it otherwise ceasing to exist.
4. This Bond and Indemnity referred to above shall be a continuing guarantee and shall extend to cover any sum (including interest) which shall be due at the time to the Administering Authority from the Transferee Admission Body by virtue of the premature termination of the Contract.
5. The giving of time by the Administering Authority to the Transferee Admission Body for the payment or reimbursement of any sums due to the Administering Authority or any neglect or forbearance by the Administering Authority in requiring payment or other indulgence on the part of the Administering Authority shall not in any way prejudice or affect the liability of the Guarantor.
6. This Bond and Indemnity shall remain in operation notwithstanding any variation made in the terms of the Admission Agreement or in the Contract and notwithstanding that the Transferee Admission Body shall be dissolved or go into liquidation whether compulsorily or otherwise or otherwise cease to exist or function.
7. This Bond and Indemnity shall remain in operation until such time as the Administering Authority shall certify in writing that no further payments are due and payable to it by virtue of its having entered into the Admission Agreement and the Guarantor shall have no power to revoke the guarantee and the indemnity given hereunder.
8. For the purposes of this Bond and Indemnity, the premature termination of the Contract shall be deemed to have occurred as soon as the Administering Authority has, on reasonable grounds, certified that the Transferee Admission Body has ceased to perform a substantial proportion of the work or services to be performed under the Contract before the date on which the said Contract was due to expire.
9. Any notice to be served under this Bond and Indemnity may be served by delivering or sending the same by first class post or facsimile transmission to the addresses given herein by the parties to this Agreement or to any other address which the

parties may notify the others in writing shall be appropriate for the receipt of such notices.

10. The Guarantor shall not assign, transfer or subcontract its rights or obligations contained in this Agreement without the prior consent of the Transferee Admission Body and the Administering Authority which may withhold such consent in their absolute discretion.
11. The service of any claim or demand by the Administering Authority under the terms of this Bond and Indemnity shall not preclude the service of any other or further demand.
12. All sums paid by the Guarantor under the terms of this Bond shall be held and applied by the Administering Authority for the purposes of paying and discharging the liabilities of the Transferee Admission Body in relation to the Pension Fund.
13. The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and the terms of that act are hereby expressly excluded.
14. This Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

**IN WITNESS** whereof the parties have executed this Agreement as a Deed the day and year first before written

Signed by or on behalf of the Guarantor  
namely [ ]  
acting by a Director and its Secretary/two  
Directors whose signatures are here subscribed:

namely:

Signature..... Director

and namely:

Signature..... Director/Secretary

Signed by or on behalf of the Transferee Admission  
Body namely [ ]  
acting by a Director and its Secretary/two  
Directors whose signatures are here subscribed:

namely:

Signature..... Director

and namely:

Signature..... Director/Secretary

The Common Seal of **City of Bradford  
Metropolitan District Council** was hereto  
affixed in the presence of:

Authorised by Assistant Director Corporate Services (City Solicitor)

## SCHEDULE 25

### Bulk Transfer Terms

#### 1. INTERPRETATION AND DEFINITIONS

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

**"Actuary's Letter"** means the letter from the Administering Authority's Actuary, a copy of which has been attached to this schedule;

**"Administering Authority's Actuary"** means Tim Lunn FIA, Retirement Practice, Hewitt Associates Limited, 40 Queen Square, Bristol, BS1 4QP or another actuary appointed by the Administering Authority for the purposes of this schedule;

**"AVCs"** means AVCs or SCAVCs as defined in the LGPS Regulations;

**"Contractor's Actuary"** means [*name of actuary*] of [*name of firm*], or another actuary appointed by the Contractor and/or relevant Sub-Contractor for the purposes of this schedule;

**"Contractor Scheme"** means the pension scheme or schemes nominated by the Contractor and/or relevant Sub-Contractor in accordance with clause 30.9.1 of this Agreement;

**"Due Date"** means the date 20 Working Days after the last of the conditions in paragraph 3.6 of this schedule has been satisfied;

**"Fund"** means the West Yorkshire Pension Fund within the LGPS;

**"Transfer Amount"** means the amount or amounts referred to in paragraph 3.1 of this schedule;

**"Transferring Member"** means an Eligible Employee who agrees to a transfer of benefits being made for him or her from the Fund to the Contractor Scheme under paragraph 2 of this schedule.

## **2. THE CONTRACTOR SCHEME**

The Contractor shall (and shall procure that each relevant Sub-Contractor shall) invite each Eligible Employee who joins the Contractor Scheme in accordance with clause 30.7.1 of this Agreement to consent to a transfer of benefits being made for him from the Fund to the Contractor Scheme. The Contractor and/or relevant Sub-Contractor must issue this invitation no later than one month after the Relevant Transfer Date. The invitation must be in a form acceptable to the City Council and the Administering Authority (such acceptance not to be unreasonably withheld or delayed by the City Council) and which complies with any requirements of the LGPS Regulations. Any Eligible Employee wishing to consent to a transfer of benefits must notify the Contractor and/or relevant Sub-Contractor of this consent in writing no later than three months after the date of the invitation. The Contractor shall (and shall procure that each relevant Sub-Contractor shall) provide the City Council and the Administering Authority with the names of the Transferring Members no later than four months after the Relevant Transfer Date.

## **3. TRANSFER PAYMENT FROM THE FUND**

3.1 The City Council shall use reasonable endeavours to ensure that the Administering Authority transfers from the Fund to the Contractor Scheme on the Due Date an amount in respect of the relevant Transferring Members' service in the Fund before the Relevant Transfer Date calculated in accordance with the Actuary's Letter and the LGPS Regulations.

3.2 As soon as reasonably practicable following the Relevant Transfer Date, the Contractor shall (and shall procure that each relevant Sub-Contractor shall) promptly provide all data within its possession or under its control which the Administering Authority and the Administering Authority's Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.

3.3 As soon as reasonably practicable following the Relevant Transfer Date, the City Council shall promptly provide all data within its possession or under its control which the Administering Authority and the Administering Authority's Actuary may require for the calculation of the Transfer Amount and shall warrant that this data is in all material respects true, complete and accurate.

- 3.4 The City Council shall use its reasonable endeavours to procure that:
- 3.4.1 as soon as reasonably practicable after the Administering Authority's Actuary has been provided with the necessary data and information, the Administering Authority's Actuary shall calculate the Transfer Amount in accordance with the Actuary's Letter and the LGPS Regulations; and
  - 3.4.2 within one week of completing this calculation, the Administering Authority's Actuary shall notify the Contractor's Actuary in writing of the particulars of the calculation and the data on which the calculation is based.
- The Contractor's Actuary will then have one month (or such longer period as the parties may agree) from the date on which those particulars and data have been supplied to him in which to object in writing that the calculation is incorrect or not in accordance with the Actuary's Letter. The calculation shall be final and binding on the parties if the Contractor's Actuary raises no objection within this stated period.
- 3.5 If the Contractor's Actuary objects in writing under paragraph 3.4 of this schedule and the Administering Authority's Actuary and the Contractor's Actuary cannot subsequently agree the Transfer Amount within one month (or such longer period as shall be agreed between the parties) of the objection, then the amount shall be determined by an independent actuary to be nominated by the Administering Authority and the Contractor and/or relevant Sub-Contractor jointly or, if they cannot agree, by the President of the Institute of Actuaries on application by either party. The independent actuary shall act as an expert and not as an arbitrator, and his decision shall be final and binding on the parties. The independent actuary's costs shall be payable equally by the Administering Authority and the Contractor and/or relevant Sub-Contractor.
- 3.6 Payment to the Contractor Scheme of the Transfer Amount shall only be made on the following conditions:

- 3.6.1 the Transfer Amount has been agreed or determined under paragraph 3.4 or 3.5 of this schedule and in accordance with the LGPS Regulations;
- 3.6.2 HM Revenue & Customs has consented to the making of the payment (which consent the City Council and the Contractor and/or any relevant Sub-Contractor shall use reasonable endeavours to obtain);
- 3.6.3 the Contractor and/or relevant Sub-Contractor has complied with all its obligations under this schedule; and
- 3.6.4 the trustees of the Contractor Scheme have confirmed in writing that:
  - 3.6.4.1 a payment should be made in accordance with the LGPS Regulations and that they shall accept payment on the terms set out in paragraph 4 of this schedule;
  - 3.6.4.2 they shall accept liability for each Transferring Member's accrued contracted out rights under the Fund; and
  - 3.6.4.3 they shall accept the Transfer Amount in full and final settlement of all claims against the Fund in respect of each Transferring Member.
- 3.7 The payment of the Transfer Amount shall be satisfied by the transfer of readily marketable stocks and shares of the Fund as agreed by the Administering Authority and the trustees of the Contractor Scheme having a mid-market value on the day before the Due Date equal to the Transfer Amount. If the Administering Authority and the trustees of the Contractor's Scheme are not able to agree some or all of the particular assets to be transferred, or the mid-market value of any such assets, the payment of the Transfer Amount (or the appropriate part of it) shall be satisfied by the Fund transferring cash.

#### **4. PAST SERVICE BENEFITS**

- 4.1 The Contractor shall (and shall procure that each relevant Sub-Contractor shall) ensure that the Contractor Scheme provides in respect of each

Transferring Member such benefits as the Administering Authority's Actuary certifies to be of actuarially equivalent value (in accordance with the Actuary's Letter) to the benefits which would have been payable under the LGPS in respect of the Transferring Member's service before the Relevant Transfer Date if he had remained a member of the LGPS.

- 4.2 The Transfer Amount will, subject only to HM Revenue & Customs' limits, be wholly applied in the Contractor Scheme for the provision of benefits mentioned in paragraph 4.1 of this schedule 25 (*Bulk Transfer Terms*).

## **5. ADDITIONAL VOLUNTARY CONTRIBUTIONS**

Nothing in this schedule shall apply to AVCs or to benefits secured by them. However, the City Council must ensure that the assets representing each Transferring Member's AVCs in the Fund (if any) shall be transferred to the Contractor's Scheme. The Contractor shall (and shall procure that each relevant Sub-Contractor shall) ensure that the Contractor Scheme provides benefits for each relevant Transferring Member which are equivalent to the assets transferred.

## **6. NO ASSISTANCE**

The Contractor shall not (and shall procure that each relevant Sub-Contractor shall not) encourage or initiate or assist or facilitate any action or provide any financial assistance for the purpose of requiring the Fund to pay an amount larger than the Transfer Amount to the Contractor Scheme in respect of the Transferring Members.

## **7. EXIT PROVISIONS**

- 7.1 The Contractor undertakes to the City Council (for the benefit of the City Council itself and for the City Council as agent and trustee for the benefit of the Eligible Employees that on:

7.1.1 the expiry or termination of this Agreement; or

7.1.2 the expiry or termination of any Sub-Contract in the case of a relevant Sub-Contractor; or



7.1.3 the employment of any Eligible Employee transferring to a New Employer in accordance with clause 30.14 of this Agreement (or otherwise),

the Contractor shall (and shall procure that each relevant Sub-Contractor shall) procure that the trustees of the Contractor Scheme offer bulk transfer terms in respect of the relevant Eligible Employees' service in the Contractor Scheme to the pension scheme of the City Council, any Future Service Provider (or their sub-contractors), any new Sub-Contractor or any New Employer (as applicable) which are no less favourable (in the opinion of the Administering Authority's Actuary or an actuary appointed by the City Council) than the bulk transfer terms set out in the Actuary's Letter. In addition to this, the Contractor shall procure that the New Employer complies with the requirements of paragraph 4.1.

7.2 If the transfer payment paid by the trustees of the Contractor's Scheme is less (in the opinion of the Administering Authority's Actuary or an actuary appointed by the City Council) than the transfer payment which would have been paid had paragraph 7.1 of this schedule been complied with, the Contractor shall (and/or shall procure that each relevant Sub-Contractor shall) pay to the City Council, any Future Service Provider (or their sub-contractor), any new Sub-Contractor or any New Employer (as appropriate) (or as such person shall direct) the amount of the difference.

## **8. CITY COUNCIL'S COSTS**

Any costs of the City Council necessarily and reasonably incurred in connection with this schedule shall be borne by the Contractor.

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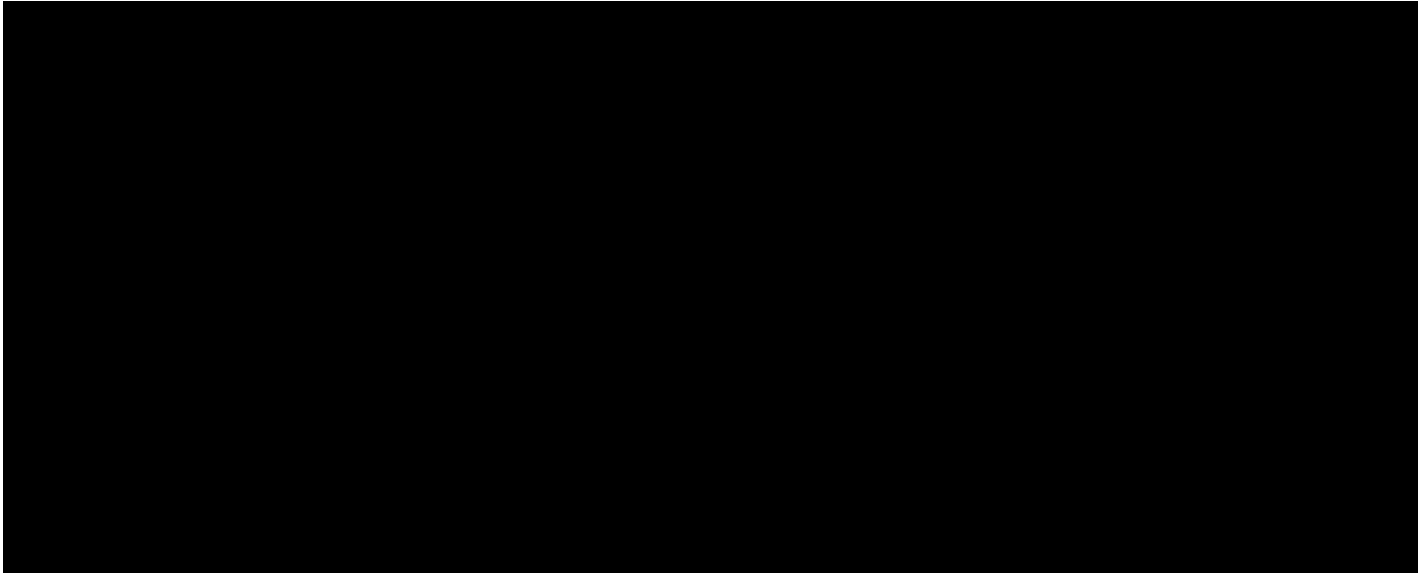
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## **Part 2 - Lifecycle Maintenance Unit Rates**

Lifecycle Maintenance Unit Rates are as per Part 1 – Construction Unit Rates



### Part 3 - Fees and Profit Margins

Professional fees, contingencies, overheads and profit margin figures from sub-contractors (as % of construction cost). No indexation.

<b>Cost of Materials</b>  Percentage to be added to net actual cost of suppliers invoice OR subject to a competitive quotation basis.	15%
<b>Cost of Plant</b>  Percentage adjustment to be applied to the cost of plant at the rates contained in the current RICS schedule of basic plant Charges OR subject to a competitive quotation basis.	11%  Plant rates subject to a competitive quotation basis

#### Part 4 - Contractor Management Costs

Hourly rate for costing Contractor time, fixed for life of the Project but indexed at RPI

<b>Discipline</b>	<b>£/HR</b>
Architect	56.61
Structural Engineer	66.60
Assistant Contract Manager	36.19
Quantity Surveyor	44.22
Assistant Project Manager	35.09
Planning Supervisor	35.75
Estimator	35.79
Buyer	33.84
Health and Safety	35.75
Planner	38.35
General Manager	69.38
Finance Manager	46.50
Construction Manager	61.44



**APPENDIX 3**

**City Council Change Notice for a Low Value Change**

<b>CATALOGUE ORDER FORM</b>	
<b>City Council Change Notice - Low Value Change</b>	<b>Dated .....</b>
<b>To be completed by City Council Representative</b>	
Change no:	
Brief description of the Change	
Change of Law	
Catalogue reference number (if applicable)	
Catalogue price of Change (if applicable)	
Budget for the Change (if not Catalogue)	
Date for completion/implementation	
<b>To be completed by Contractor Representative</b>	
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)	
<b>Total cost</b>	

## APPENDIX 4

### Confirmation Notice

## Confirmation Notice

This Change Notice is to be used in conjunction with Schedule 26 of the Project Agreement (Change Protocol).

The City Council hereby confirms that the Contractor (sc4L) shall proceed with the Change as detailed below.

The City Council hereby withdraws the Change detailed below.

(Delete as appropriate)

<b>Change Number:</b>	
<b>Type of Change:</b>	Low Value / Medium Value / High Value (delete as appropriate)
	Insert catalogue reference number(s) if applicable.
<b>Agreed Details of the Change:</b>	
<b>Agreed Costs of the Change:</b>	
<b>Agreed Start Date OR Phased Date(s) of Change:</b>	
<b>Method of Funding and Payment to Contractor:</b>	Increase of Unitary Charge – YES/NO
	Decrease of Unitary Charge – YES/NO
	Other (please state)
<b>Agreed Start Date of Revised Payment:</b>	
<b>Additional Notes:</b>	(please state, including confirmation of Funder due diligence)

<b>Authorised by:</b>	<b>City Council</b>	<b>Print Name:</b>	<b>Date:</b>
		<b>Signature:</b>	
	<b>Sc4L</b>	<b>Print Name:</b>	<b>Date:</b>
		<b>Signature:</b>	

## SCHEDULE 27

### Early Demolition

Early demolition works will be carried out by The City Council within the area edged red on plans referenced Plan # LCCFC LL 13 - v1 for Carlton gate and Plan # LCCFC BHH 14 - v1 for Holbeck Towers (both plans contained at appendix 10 (*Project Sites*)) to the following standards:

#### Part 1

Early Demolition Site	Early Demolition Works Standard	Early Demolition Works Completion Date
Carlton Gate (Plan # LCCFC LL 13 - v1) Area shaded Yellow	Standard 1	Date of this Agreement
Carlton Gate (Plan # LCCFC LL 13 - v1) Area shaded Blue	Standard 2	Date of this Agreement
Carlton Gate (Plan # LCCFC LL 13 - v1) Area shaded Red	Standard 3	Date of this Agreement
Carlton Gate (Plan # LCCFC LL 13 - v1) Area shaded Green	Standard 4	Date of this Agreement
Holbeck Towers (Plan # LCCFC BHH 14 - v1) Area shaded Yellow	Standard 1	Date of this Agreement



Early Demolition Site	Early Demolition Works Standard	Early Demolition Works Completion Date
Holbeck Towers (Plan # LCCFC BHH 14 - v1) Area shaded Blue	Standard 2	Date of this Agreement
Holbeck Towers (Plan # LCCFC BHH 14 - v1) Area shaded Red	Standard 3	Date of this Agreement
Holbeck Towers (Plan # LCCFC BHH 14 - v1) Area shaded Green	Standard 4	Date of this Agreement

## Part 2

For the purposes of this schedule:

Standard 1 - Demolition in the area(s) shaded Yellow on plans referenced # LCCFC LL 13 - v1 for Carlton gate and # LCCFC BHH 14 - v1 for Holbeck Towers will be carried out in accordance with the Demolition Works Certification standard within Part 4 of this schedule 27 (*Early Demolition*).

Standard 2 - The buildings within the area shaded blue on plans referenced # LCCFC LL 13 - v1 for Carlton gate and # LCCFC BHH 14 - v1 for Holbeck Towers will be demolished in accordance with Part 3 of this schedule 27 (*Early Demolition*).

Standard 3 - The area shaded red on plans referenced # LCCFC LL 13 - v1 for Carlton gate and # LCCFC BHH 14 - v1 for Holbeck Towers indicates current hard standing/road areas which will remain undisturbed during the demolition works.

Standard 4 - The area shaded green on plans referenced # LCCFC LL 13 - v1 for Carlton gate and # LCCFC BHH 14 - v1 for Holbeck Towers indicates current areas of soft landscaping that will remain undisturbed.

### Part 3

#### Demolition Properties with adjacent Japanese Knotweed Areas

These will form the basis of the Certification Procedure and should be achieved by the Contractor when offering up a Demolition Site for Certification.

1.	Demolition of the buildings within the area edged blue on plan # LCCFC LL 13 - v1 for Carlton gate and # LCCFC BHH 14 - v1 for Holbeck Towers
2.	Compliance with the latest British Standards, Buildings Regulations and associated legislative requirements in relation to the demolition by manual and/or mechanical operations of brick and/or system built properties.
3.	<b>ALL</b> services in conjunction with the Statutory Authorities serving the building to be demolished have been safely and effectively terminated with the point of termination identified on the as built drawing included within the Health and safety File.
4.	<b>ALL</b> disused sewers and drains have been removed and sealed at the point that they penetrate the ground floor slab in order to prevent the egress of vermin and odours onto the site.
5.	Any timber, organic and hazardous materials including asbestos have been safely removed and disposed off site.
6.	The areas that have been designated as contaminated with Japanese Knotweed are being treated as per the attached "Statement relating to the Treatment of Japanese Knotweed to the Early Demolition Sites" below.

#### Statement relating to the Treatment of Japanese Knotweed to the Early Demolition Sites

The areas of Japanese Knotweed adjacent to the tower blocks (base of 50-103 Carlton Towers and base of 62-121 Holbeck Towers) are fairly weak in this location and have now been treated with 2 of the 4 recommended applications of systemic herbicide (as of 26.04.10).

Prior to demolition commencing, areas of dead stems will be stripped away and a geotextile mat placed over the surrounding soft landscape area within a 5m radius of the remaining stands.

Hard landscaping within a radius of 7m of the remaining stands will be left intact and undisturbed throughout the demolition and until construction commences on site.

## Part 4

### Certification Standard (Demolition Properties)

1.	Compliance with the latest British Standards, Buildings Regulations and associated legislative requirements in relation to the demolition by manual and/or mechanical operations of brick and/or system built properties.
2.	<b>ALL</b> services in conjunction with the Statutory Authorities have been safely and effectively terminated.
3.	<b>ALL</b> disused sewers and drains have been removed and sealed to prevent the egress of vermin and odours onto the site.
4.	Any concrete slab foundations, lift pits, all other forms of foundations, edge beams, ground beams, piles and pile caps etc. have been safely removed to a depth of at least 1.5 metres and disposed off site.
5.	Any associated hard standings, footpaths and all material that has arisen from the demolition and related activity have been safely removed and disposed off site.
6.	Any timber, organic and hazardous materials including asbestos have been safely removed and disposed off site.
7.	All excavations resulting from the removal of foundations, floor slabs, hard standings etc. have been back filled to a depth not exceeding 1.5m using selected inert demolition materials passing a 150mm ring gauge assessment which has been laid in maximum 150mm suitably compacted layers. Each layer blinded with a 25mm layer of fine demolition material or imported sand then compacted to formation level i.e. 300mm below the finished ground level at the perimeter of the site.
8.	Any "soft spots" that were identified prior to or discovered as a result of the demolition works have been excavated to a maximum depth of 1.5m or until a suitably sound strata with adequate bearing capacity has been found. The excavation then back filled as detailed above in 7.
9.	All apparatus, manholes and/or other service access points and chambers within the site have been adjusted to accommodate revised levels and kept clear and unobstructed.
10.	Any site or part thereof not to be developed within 6 months of demolition shall be covered with an approved sub-soil lightly compacted to a depth of 150mm below finished ground level. It has then been covered with graded topsoil to a uniformed depth of 150mm and lightly compacted. The top soil has been cultivated to a fine tilth and is reasonably free from stones and weeds. The surface has then been scarified, general fertiliser and quality grass seed applied in accordance with the supplier's recommendations.
11.	Any site or part thereof not to be developed within 6 months of demolition shall have in place means restricting unauthorised vehicular access (e.g. Soil bunding or knee rail fencing) and maintained in line with Contractors Proposals.

## SCHEDULE 28

### Title Matters

#### Part 1

### Title Matters

1. The City Council represents and warrants that it has disclosed all Adverse Rights provided that it shall not be responsible for nor will the City Council be liable to pay any compensation or be held to be in breach of this warranty in respect of any of the following ("**Disclosed Matters**"):
  - 1.1 Disclosed Searches and Disclosed Title Matters listed in Part 2 of this schedule 28 (*Title Matters*) provided that the covenants contained in the conveyance dated 14 April 1908 made between (1) The Leeds Permanent Benefit Building Society, (2) John Rothery Allison and Henry Allison, (3) Isabel Allison and (4) James Watson Thomas Benn (Purchaser) shall be deemed not to be a Disclosed Title Matter;
  - 1.2 entries in any public register which would have been revealed by searches carried out prior to the Commencement Date by a prudent purchaser of the Project Sites or any part thereof;
  - 1.3 Adverse Rights which are discoverable by inspection of the Project Sites;
  - 1.4 all utility equipment and apparatus situated in, on, over, under or through the Project Sites including (without limitation) telegraph poles, drains and sewers and all service media and all rights to use the same;
  - 1.5 all such public rights of way (if any) which exist over the Project Sites; and
  - 1.6 all rights of light and air which affect any of the Project Sites.
2. In the event that an Adverse Right which is not a Disclosed Matter is revealed and the City Council is found to be in breach of its warranty given above which breach prevents or disrupts the provision of the Works and/or the Services, the matter shall (subject to the provisos in paragraph 3) be treated as a Compensation Event and clause 16.5 (*Delays due to a Compensation Event*) shall apply until such time as the City Council procures the removal of such Adverse Right or issues a City Council

Change pursuant to clause 53 (*City Council and Contractor Changes*) to remove the breach or terminates this Agreement in accordance with clause 39 (*Termination on Force Majeure*) and clause 42 (*Compensation on Termination for Force Majeure*) shall apply as if Force Majeure Event had occurred.

3. In the event that the Contractor discovers an Adverse Right which is not a Disclosed Matter which is disrupting or preventing or may disrupt or prevent the Works and/or the Services, it shall immediately notify the City Council of its existence. The City Council shall then seek to procure the removal (whether temporarily or permanently) of such Adverse Right to the extent that it disrupts or prevents the Works and/or the Services provided that in the event that the Contractor fails or delays in providing the said notification the City Council shall not be liable pursuant to paragraph 2 or clause 16.5 (*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.































































































































































## LOCAL SEARCHES

<b>List of Documents</b>	
<b>Little London: Local Searches</b>	<b>Date</b>
Carlton Gate, Carlton Carr and Lovell Park Road	31/12/2008
Meanwood Street	01/02/2009
<b>Beeston Hill &amp; Holbeck: Local Searches</b>	<b>Date</b>
Malvern Rise & Malvern Grove	02/01/2009
Holbeck Towers, Gaitskell Grange and Gaitskell Court	02/01/2009
Land off Fairfax Road	02/01/2009
Waverley Garth & Coupland Street	02/01/2009
Folly Lane	29/01/2009
165-183 Malvern Road	11/02/2009
1-21 Coupland Road	11/02/2009
Bismarck Street	11/02/2009
Bismarck Drive	11/02/2009
2-20 St Luke's Green	11/02/2009
1-41 St Luke's Green	11/02/2009
131-159 Malvern Road	11/02/2009
15 - 44 Coupland Place	12/02/2009

## BELL CABLE MEDIA DEED

<b>List of Documents</b>	<b>Comments</b>	<b>Date</b>	<b>Parties</b>
Bell Cable Media Deed	LCC granted rights to BCMLL to install apparatus within the Leeds Metropolitan area	13th July 1995	LCC & Bell Cable Media (Leeds) Ltd

## PLANS

List of Documents	Plan Reference Number
<b>Little London: Plans</b>	
Project Area Boundary with New Build sites	LCCFC LL 1 - v2
New Build Site Edge Red: Carlton Gate	LCCFC LL 1a - v2
Property Status Plan - Refurbishment, Freehold, Leasehold and Conversion Properties). Including schedule of addresses for property status plan	LCCFC LL 2 - v2
Substation Plan	LCCFC LL 3 - v2
Environmental Maintenance Areas	LCCFC LL 4 - v3
Telecoms	LCCFC LL 5 - v1
Carlton Gate - Japanese Knotweed Location with 7mtr Treatment Zone	LCCFC LL 6 - v2
Registered title plan Site A Site B Site C Site D Site E	LCCFC LL 7a - v1 LCCFC LL 7b - v1 LCCFC LL 7c - v1 LCCFC LL 7d - v1 LCCFC LL 7e - v2
Demolition plan	LCCFC LL 8 - v2
Garages for Refurbishment	LCCFC LL 9 - v1
Carlton Gate TVG Application Risk	LCCFC LL 10 - v2
Current Environmental Maintenance Areas	LCCFC LL 12 - v1
Carlton Gate - SC4L Approximate Design Solution showing LCC Demolition Proposals	LCCFC LL 13a (sc4L) - v1
<b>Beeston Hill &amp; Holbeck: Plans</b>	
Project Area Boundary with New Build sites	LCCFC BHH 1 - v2
New Build Site Edge Red: Holbeck Towers Folly Lane St Lukes Green Malverns Bismarcks Coupland Road	LCCFC BHH 1a - v2 LCCFC BHH 1b - v1 LCCFC BHH 1c - v1 LCCFC BHH 1d - v1 LCCFC BHH 1e - v1 LCCFC BHH 1f - v1



List of Documents	Plan Reference Number
Coupland Place Fairfaxes	LCCFC BHH 1g - v1 LCCFC BHH 1j - v1
Property Status Plan - Refurbishment, Freehold, Leasehold and Conversion Properties). Including schedule of addresses for property status plan	LCCFC BHH 2 - v2
Substation Plan	LCCFC BHH 3 - v2
Environmental Maintenance Areas	LCCFC BHH 4 - v3
Telecoms Plan	LCCFC BHH 5 - v2
Plan showing location of Meynell Walk Shop	LCCFC BHH 6 - v2
Registered title plan	LCCFC BHH 7 - v2
Demolition plan	LCCFC BHH 8 - v2
Fairfaxes TVG Application Risk	LCCFC BHH 10 - v2
Current Environmental Maintenance Areas	LCCFC BHH 11 - v1
Holbeck Towers - Japanese Knotweed Location with 7mtr Treatment Zone	LCCFC BHH 13 - v2
Holbeck Towers - SC4L Approximate Design Solution showing LCC Demolition Proposals	LCCFC BHH 14a (sc4L) - v1
Fairfaxes - Japanese Knotweed Location with 7mtr Treatment Zone	LCCFC BHH 15 - v1
Malvern Road - Japanese Knotweed Location with 7mtr Treatment Zone	LCCFC BHH 16 - v1
Coupland Road - Japanese Knotweed Location with 7mtr Treatment Zone	LCCFC BHH 17 - v1

























## SUBSTATION LEASES

List of Documents	Date	Parties	Sub-station Numbers
<b>Little London: List of Leases/ Easments/ Wayleaves for Sub-Stations and Apparatus</b>			
Oatland Gardens	08/08/1973	LCC&YEB	4198
Carlton Street	15/04/1964	LCC&YEB	2934
<b>Oatland Flats</b>	<b>No lease in place</b>	<b>LCC&amp;YEB</b>	<b>5162</b>
Oatland Court	24/10/2012	LCC&YEB	4054
Oatland Heights and Oatland Drive	14/02/2007	LCC&YEB	4102
Lovell Park Towers	04/02/1986	LCC&YEB	5161
Camp Road Site 1 (Lovell Park Towers)	14/05/1968	LCC&YEB	3627
Camp Road Site 2&3 (Lovell Park Towers)	02/05/1968	LCC&YEB	3628/3629
Carlton Rise	08/06/1967	LCC&YEB	2935
Carlton Approach 1	24/10/1958	LCC&YEB	1822
Carlton Approach 2	20/02/1959	LCC&YEB	1965
Carlton View	11/02/1976	LCC&YEB	4485
Servia Gardens	19/06/1975	LCC&YEB	4486
Oatland Green	06/07/2010	LCC&YEB	4199
Easement - Lovell Park Hill	19/07/1983	LCC&YEB	N/A
Easement - Woodhouse Street; Servis Road; Meanwood Road; Cambridge Road	26/11/1981	LCC&YEB	N/A
Wayleave - Carlton Gate	01/12/1992	LCC&YEB	N/A
<b>Beeston Hill &amp; Holbeck: List of Leases/ Easments/ Wayleaves for Sub-Stations and Apparatus</b>			
Folly Lane	09/06/1967	LCC&YEB	3065
Holbeck Towers Jenkinson Lawn	06/06/1968	LCC&YEB	2850/2851
Holbeck Towers Charles Close	31/08/1964	LCC&YEB	2330/2331/2332
Waverley Garth	28/02/1979	LCC&YEB	4626
Balm Walk	25/05/1977	LCC&YEB	4627

## TELECOMS (REFURB)

List of Documents	Date	Parties
<b>Little London: Telecom Mast Locations</b>		
Oatland Towers	12.01.2006	LCC & T Mobile
<b>Beeston Hill &amp; Holbeck: Telecom Mast Locations</b>		
Meynell Heights	17.11.2010	LCC & Everything, Everywhere Ltd

## TREE SURVEY

<b>List of Documents</b>
<b>Little London: Tree Surveys</b>
Tree Survey Environmental Improvement Areas Little London Prepared for Leeds City Council February 2009
Pre-Development Tree Survey Carlton Gate 29th April 2008
<b>Little London: Tree Survey Plans</b>
Carlton Gate Drawing No. BA2548TS/CGLL/F600164 28th April 2008
Little London Phase 2 Lovell Parks Tree Survey View 8 Drawing No. B05850F1/09/TS11 25th February 2009
Little London Phase 2 Carltons 1 Ideal Building Line Plan View 1 Drawing No. B05850F1/09/IBL4 25th February 2009
Little London Phase 2 Carltons 1 and 2 Ideal Building Line Plan View 2 Drawing No. B05850F1/09/IBL5 25th February 2009
Little London Phase 2 Oatlands 1 Ideal Building Line Plan View 3 Drawing No. B05850F1/09/IBL6 25th February 2009

## List of Documents

Little London Phase 2  
Oatlands 2  
Ideal Building Line Plan View 4  
Drawing No. B05850F1/09/IBL7  
25th February 2009

Little London Phase 2  
Oatlands 2  
Ideal Building Line Plan View 5  
Drawing No. B05850F1/09/IBL8  
25th February 2009

Little London Phase 2  
Servias  
Ideal Building Line Plan View 6  
Drawing No. B05850F1/09/IBL9  
25th February 2009

Little London Phase 2  
Lovell Parks  
Ideal Building Line Plan View 7  
Drawing No. B05850F1/09/IBL10  
25th February 2009

Little London Phase 2  
Lovell Parks  
Ideal Building Line Plan View 8  
Drawing No. B05850F1/09/IBL11  
25th February 2009

Little London Phase 2  
Carltons 1  
Root Protection Area Plan View 1  
Drawing No. B05850F1/09/RPA4  
25th February 2009

Little London Phase 2  
Carltons 1 and 2  
Root Protection Area Plan View 2  
Drawing No. B05850F1/09/RPA5  
25th February 2009

Little London Phase 2  
Oatlands 1  
Root Protection Area Plan View 3  
Drawing No. B05850F1/09/RPA6  
25th February 2009



## List of Documents

Little London Phase 2  
Oatlands 2  
Root Protection Area Plan View 4  
Drawing No. B05850F1/09/RPA7  
25th February 2009

Little London Phase 2  
Oatlands 2  
Root Protection Area Plan View 5  
Drawing No. B05850F1/09/RPA8  
25th February 2009

Little London Phase 2  
Servias  
Root Protection Area Plan View 6  
Drawing No. B05850F1/09/RPA9  
25th February 2009

Little London Phase 2  
Lovell Parks  
Root Protection Area Plan View 7  
Drawing No. B05850F1/09/RPA10  
25th February 2009

Little London Phase 2  
Lovell Parks  
Root Protection Area Plan View 8  
Drawing No. B05850F1/09/RPA11  
25th February 2009

Little London Phase 2  
Carltons 1  
Tree Survey View 1  
Drawing No. B05850F1/09/TS4  
25th February 2009

Little London Phase 2  
Carltons 1 and 2  
Tree Survey View 2  
Drawing No. B05850F1/09/TS5  
25th February 2009

Little London Phase 2  
Oatlands 1  
Tree Survey View 3  
Drawing No. B05850F1/09/TS6  
25th February 2009

<b>List of Documents</b>
Little London Phase 2 Oatlands 2 Tree Survey View 4 Drawing No. B05850F1/09/TS7 25th February 2009
Little London Phase 2 Oatlands 2 Tree Survey View 5 Drawing No. B05850F1/09/TS8 25th February 2009
Little London Phase 2 Servias Tree Survey View 6 Drawing No. B05850F1/09/TS9 25th February 2009
Little London Phase 2 Lovell Parks Tree Survey View 7 Drawing No. B05850F1/09/TS10 25th February 2009
<b>Beeston Hill &amp; Holbeck: Tree Surveys</b>
Tree Survey Environmental Improvement Areas Beeston and Holbeck Prepared for Leeds City Council February 2009
Balms and Ingrams Trees Survey Prepared for Leeds City Council November 2009
Pre-Development Tree Survey Holbeck Towers 8th May 2008
Pre-Development Tree Survey Folly Lane 29th April 2008
Pre-Development Tree Survey Coupland Place 12th May 2008
Pre-Development Tree Survey Fairfax Road 17th May 2008

<b>List of Documents</b>
Pre-Development Tree Survey Coupland Road 12th May 2008
Pre-Development Tree Survey St. Lukes Green 12th May 2008
Pre-Development Tree Survey Malvern Road 12th May 2008
Pre-Development Tree Survey The Bismarcks 29th April 2008
<b>Beeston Hill &amp; Holbeck: Tree Survey Plans</b>
Tree Survey Environmental Improvement Areas Beeston and Holbeck Tree Survey View 2 - Drawing No. B05850F1/09/TS2 25th February 2009
Tree Survey Environmental Improvement Areas Beeston and Holbeck Tree Survey View 3 - Drawing No. B05850F1/09/TS3 25th February 2009
Tree Survey Environmental Improvement Areas Beeston and Holbeck Ideal Building Line Plan View 1 - Drawing No. B05850F1/09/IBL1 25th February 2009
Tree Survey Environmental Improvement Areas Beeston and Holbeck Ideal Building Line Plan View 2 - Drawing No. B05850F1/09/IBL2 25th February 2009
Tree Survey Environmental Improvement Areas Beeston and Holbeck Root Protection Area Plan View 1 - Drawing No. B05850F1/09/RPA1 25th February 2009
Tree Survey Environmental Improvement Areas Beeston and Holbeck Root Protection Area Plan View 2 - Drawing No. B05850F1/09/RPA2 25th February 2009
Tree Survey Environmental Improvement Areas Beeston and Holbeck Root Protection Area Plan View 3 - Drawing No. B05850F1/09/RPA3 25th February 2009

## List of Documents

Meynell Heights Drawing No. BA2548TS/MHBH&H/F600164 8th May 2008
Holbeck Towers Drawing No. BA2548TS/HTBH&H/F600164 8th May 2008
Folly Lane Drawing No. BA2548TS/FLBH&H/F600164 8th May 2008
St. Lukes Green Drawing No. BA2548TS/SLGBH&H/F600164 8th May 2008
Malvern Road Drawing No. BA2548TS/MRBH&H/F600164 8th May 2008
Coupland Road Drawing No. BA2548TS/CRBH&H/F600164 8th May 2008
Coupland Place Drawing No. BA2548TS/CPBH&H/F600164 8th May 2008
Fairfax Road Drawing No. BA2548TS/FRBH&H/F600164 8th May 2008
The Bismarcks Drawing No. BA2548TS/TBBH&H/F600164 8th May 2008

## DOCTORS SURGERY

<b>List of Documents</b>	<b>Parties</b>
<b>Little London: Doctors Surgery</b>	
27 Carlton Gardens	Horner J & House D & Browning C

**MEYNELL WALK SHOP**

<b>List of Documents</b>	<b>Date</b>	<b>Parties</b>	<b>Title number</b>
<b>Beeston Hill &amp; Holbeck: Commercial Lease for Shop on Meynell Walk</b>			
1 Meynell Walk	Terminated 31/07/2011	N/A	N/A

## SCHEDULE 29

### Planning Risks

#### Part 1

#### Stopping Up Order Risk Matrix

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12
PFI Project Area	Area	Reference	Drawing Number	Adopted	Application Target Date (AD)  Submitted Date (SD)  Current S Start on SiteD Date (SOS)	sc4L risk mitigation design option	LCC contribution to mitigate risk	<b>Programme Impact</b> Based on: - Current 3.5yr programme - Planning submission within 3 weeks of PB - Planning approval (assume 3 month period) at FC -Following submission of s247/s257 applications a minimum period of 10 weeks (6 week objection period/4 week impact assessment) is allowed to change instruction date - Mobilisation period of 3 months - Start on-site date for affected sites	<b>Fin &amp; Delivery Impact:</b> Based on: - Current 3.5yr programme - Planning submission within 3 weeks of PB and planning approval at FC -Following submission of s247/s257 applications a minimum period of 10 weeks (6 week objection period/4 week impact assessment) is allowed to change instruction date	Risk items	<b>Cost Impact:</b> Based on: - sc4L estimate of re- design cost - sc4L estimate of planning application cost - actual cost to be open book - LCC 50% / sc4L 50% share of actual cost
NEW BUILD											TOTAL COST TO BE SHARED

Little London	Carlton Gate	Footpath 1	LL-01-808-FT1	Yes	AD 31 March 2013  SOS 24/2/14	- Plot 110 (Block 7) added above plot 37 (Block 2), plot 111 (Block 7) added above plot 40 (Block 2) and plot 112 (Block 7) added above plot 43 (Block 2) - Plot 113 (Block 7) incorporated into minor redesign to Block 4	Issue change instruction by 30 Sept 2013						£52,189
Little London	Carlton Gate	Highway 2, 3 & 4  PROW 32	LL-01-808-FT1	Yes	AD 31 March 2013  SOS 24/2/14	- Repositioning of existing Blocks 3 & 5 with existing highway alignment - Plots 45 & 54 (Block 3) incorporated into redesign of Block 5 - Plot 44 (Block 3) incorporated into minor redesign of Block 4 - Plot 29	Issue change instruction by 30 Sept 2013	- services enabling works commence 5 months after s247 period - build works commence 11 months after s247 period	- redesign works 1 month - planning approval 3 months	- s247 period i.e. longer than 2.5 months - timing of objection i.e. first month / last month - method of dealing with objection i.e. challenge - planning approval period i.e. longer than 3 months		£60,096	



						(Block 2) repositioned and incorporated into redesign of Block 2					
Beeston Hill & Holbeck	Holbeck Towers	Highway1, 2, 3 & 4	BH-01-808-FT1/810 FT1	Yes	AD 15 July 2013  SOS 11/7/14	Plot 107 & 108 (Block 9) added above plot 22 & 28 (Block 1), and plot 105 & 106 (Block 9) added above plot 33 & 37 (Block 1)	Issue change instruction by 29/1/14	- services enabling works commence 5 months after s247 period - build works commence 9 months after s247 period	- redesign works 1 month - planning approval 3 months		£79,438
Beeston Hill & Holbeck	St. Lukes Green	Footpath 1	BH-12-808-FT1	Yes	AD 08 July 2013  SOS 4/8/14	Block 2 revised to incorporate plot 4(Block 1), Block 3 revised to incorporate plot 11 (Block 1) and plots 5, 6, 7, 8, 9 & 10 redesigned to form 3 storey apartment block	Issue change instruction by 20/2/14	- demolition start on 28 Oct 2013 and services enabling works commence 6 months after s247 period - build works commence 8 months after s247 period	- redesign works 1 month - planning approval 3 months		£15,814

Beeston Hill & Holbeck	St. Lukes Green	Footpath 2	BH-12-808-FT1	Yes	AD 08 July 2013  SOS 4/8/14	Position of plots 14, 15 & 16 revised to incorporate through redesign	Issue change instruction by 20/2/14				£4,744
Beeston Hill & Holbeck	Malverns	Footpath 1	BH-11-815-FT2	Yes	SD 18 Dec 2012  SOS 3/2/14	Position of plots 1, 2, 3, 4, 16, 20 & 21 revised to incorporate through redesign	Issue change instruction by 29 July 2014	- demolition start on 07 Oct 2013 and services enabling works commence 5 months after s247 period - build works commence 8 month after s247 period	- redesign works 1 month - planning approval 3 months		£14,233
Beeston Hill & Holbeck	Bismarck Drive	Highway 1	BH-04-811-FT1	Yes	AD 08 July 2014  SOS 3/8/15	Position of plots 19 to 30 revised to incorporate through minor redesign	Issue change instruction by 11 Jan 2015				£18,977
								- demolition start on 09 Dec 2013 and services enabling works commence 5 months after s247 period - build works commence 7 months after s247 period	- redesign works 2 months - planning approval 3 months		
Beeston Hill & Holbeck	Bismarck Drive	Highway 2	BH-04-811-FT1	Yes	AD 08 July 2014  SOS 3/8/15	Plot 1 & 2 (Block 1) added above plot 15 & 12 (Block 1) and plot 3 (Block 1) added above plot 4 & 6 (Block 1)	Issue change instruction by 11 Jan 2015				£28,466

Beeston Hill & Holbeck	Bismarck Drive	Footpath 3	BH-04-811-FT1	Yes	AD 08 July 2014  SOS 3/8/15	Major redesign of site required to achieve same no. of units	Issue change instruction by 11 Jan 2015				£80,267
Beeston Hill & Holbeck	Bismarck Drive	PRoW 27	BH-04-812-FT2	No	AD 08 July 2014  SOS 3/8/15	Block 4, 5 & 6 redesigned to achieve same no. of units with slightly higher ratio of apartments to houses	Issue change instruction by 11 Jan 2015				£20,559
Beeston Hill & Holbeck	Bismarck Street	Footpath 1 & 2 Highway 3	BH-05-809-FT2	Yes or No	AD 08 July 2014  SOS 27/7/15	Position of plots 1 to 10 revised through minor redesign	Issue change instruction by 11 Jan 2015	demolition start on 09 Dec 2013 and services enabling works commence 5 months after s247 period - build works commence 6 months after s247 period	- redesign works 1 months - planning approval 3 months	N/A	£20,113
Beeston Hill & Holbeck	Folly Lane	Clarification with the LCC highways	BH-09-C805/809	Yes or No	SD 18 Dec 2012  SOS 3/2/14	Reposition Block 4	Issue change instruction by 2/10/13	enabling works commence 5 months after s247 period - build works commence 7 months after s247 period	- redesign works 1 months - planning approval 3 months	N/A	£20,278

Beeston Hill & Holbeck	Coupland Place	Footpath 1	BH – 07-C805		SD July 2012	N/A	N/A	Approved October 2012 Ref: A76/KB/869991	N/A	N/A	N/A
					SOS 3/2/14						
Beeston Hill & Holbeck	Coupland Road	Highways 1, 2,3 & 4	BH-07-C805/809		SD 18 Dec 2012	N/A	Issue change instruction by 2/10/13	Demolition works start 07 Oct 2013 enabling works commence 9 months after s247 period - build works commence 11 months after s247 period	N/A	N/A	N/A
					SOS 16/6/14						
Beeston Hill & Holbeck	Fairfax Road	N/A - no application required	BH-08-C809	No	AD N/A	N/A	N/A	N/A	N/A	N/A	N/A
					SOS 3/8/15						
<b>REFURBISHMENT</b>											
Little London	Carltons 1	Highways 3,20,25,26 & 29	LL-01-C805	Yes	AD 18 Dec 2012		Issue change instruction by 30/9/13	Final scheme layout for Environmental Works would not be compliant with Contractors Proposals	Redesign work will consist of boundary treatment and proposed garden		£6000

	Low Rise	Footpaths 1,2,4,5,6,7 ,8,9,10,11, 12,13,14,1 5,16,17,18 ,19,21,22, 23,24,27,2 8,30,31,32 &33			<b>SOS</b> 10/2/14				areas with the configuration of existing footways. Impact on alley gating proposals.		
Little London	Carltons 2  High Rise	Highways 2,3,4,5,6& 7  Footpaths	LL-08- C805	Yes	<b>AD</b> 18 Dec 2012  <b>SOS</b> 26/8/14		Issue change instruction by 30/9/13	Final scheme layout for Environmental Works would not be compliant with Contractors Proposals	Redesign work will consist of boundary treatment and proposed garden areas with the configuration of existing footways. Impact on alley gating proposals.	N/A	£6000
Little London	Oatlands 1  Low Rise	Highways 2  Footpaths 1,3,4,5&6	LL-06- C809	Yes	<b>AD</b> 08 Sept 2014  <b>SOS</b> 16/11/15		Issue change instruction by 23/3/15	Final scheme layout for Environmental Works would not be compliant with Contractors Proposals	Redesign work will consist of boundary treatment and proposed garden areas with the configuration of existing footways. Impact on alley gating proposals.	N/A	£6000
Little London	Oatlands 2  High Rise	Highways 1,2,3,4,9& 10	LL-09-805	Yes	<b>AD</b> 08 April 2014  <b>SOS</b>		Issue change instruction by 29 Sept 2014	Final scheme layout for Environmental Works would not be compliant with Contractors Proposals	Redesign work will consist of boundary treatment and proposed garden areas with the configuration of existing	N/A	£6000

					7/4/15				footways. Impact on alley gating proposals.		
Little London	Servias	Highway 13  Footpaths 1,2,3,4,5,6 ,7,8,9,10,1 1,12,13,14 7 15	LL-05-805		<b>AD</b> 06 April 2013  <b>SOS</b> 5/5/15		Issue change instruction by 6 Oct 2014	Final scheme layout for Environmental Works would not be compliant with Contractors Proposals	Redesign work will consist of boundary treatment and proposed garden areas with the configuration of existing footways. Impact on alley gating proposals.	N/A	£6000
Little London	Lovell Low Rise	N/A	LL -10-805		<b>AD</b> 21 April 2015  <b>SOS</b> 27/6/16		Issue change instruction by 10 Nov 2015	Final scheme layout for Environmental Works would not be compliant with Contractors Proposals	Redesign work will consist of boundary treatment and proposed garden areas with the configuration of existing footways. Impact on alley gating proposals.	N/A	£2000
Beeston Hill & Holbeck	Meynell Heights (as Meynells and Ninevehs)	Highways 1,2,3,4,9, 10&13	BH -17- C805/810		<b>AD</b> 18 Dec 2012  <b>SOS</b> 15/9/14		Issue change instruction by 30/10/13	PROW Diversion Approved 23 November 2012 – Ref A76/KB/869990	Redesign work will consist of boundary treatment and proposed garden areas with the configuration of existing footways.	N/A	£2000
Beeston Hill & Holbeck	Meynells and Ninevehs (East Holbeck Low Rise)	Highways 1,2,3,4,9, 10&13	BH -17 – 805/811/81 2	Yes	<b>AD</b> 10 March 2014		Issue change instruction by 29 Sept 2014	Final scheme layout for Environmental Works would not be compliant with Contractors Proposals	Redesign work will consist of boundary treatment and proposed garden	N/A	£6000

					<b>SOS</b> 11/5/15				areas with the configuration of existing footways. Impact on alley gating proposals.		
Beeston Hill & Holbeck	Ingram Court West Holbeck	Highways 1&5  Footpaths 2,3&4	BH-15-805/808/809/811		<b>AD</b> 22 April 2013  <b>SOS</b> 7/4/14		Issue change instruction by 30/10/13	Final scheme layout for Environmental Works would not be compliant with Contractors Proposals	Redesign work will consist of boundary treatment and proposed garden areas with the configuration of existing footways.	N/A	£2000
Beeston Hill & Holbeck	Holbeck Back to Backs	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>SOS</b> 5/1/15	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
Beeston Hill & Holbeck	Ingrams Low rise West Holbeck	Highways 1&5  Footpaths 2,3&4	BH- 16 - 808/809/811		<b>AD</b> 22 April 2013  <b>SOS</b> 9/11/15		Issue change instruction by 30/10/13	Final scheme layout for Environmental Works would not be compliant with Contractors Proposals	Redesign work will consist of boundary treatment and proposed garden areas with the configuration of existing footways.	N/A	£2000
Beeston Hill & Holbeck	Balms West Holbeck	Highways 1&5  Footpaths 2,3&4	BH- 16 - 808/809/811		<b>AD</b> 22 April 2013  <b>SOS</b> 6/7/15		Issue change instruction by 30/10/13	Final scheme layout for Environmental Works would not be compliant with Contractors Proposals	Redesign work will consist of boundary treatment and proposed garden areas with the configuration of existing footways.	N/A	£2000

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**Part 2**  
**Town and Village Green First Matrix**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12
<b>PFI Project Area</b>	<b>Area</b>	<b>Reference</b>	<b>Drawing Number</b>	<b>Adopted</b>	<b>Current Start on Site Date</b>	<b>sc4L risk mitigation design option</b>	<b>LCC contribution to mitigate risk</b>	<b>Programme Impact</b> Based on: - Current 3.5yr programme - Planning submission within 3 weeks of PB - Planning approval (assume 3 month period) at FC - Mobilisation period of 3 months to ISC - TVG application unsuccessful (at end of 24 month TVG period)	<b>Fin &amp; Delivery Impact:</b> Based on: - Current 3.5yr programme - Planning submission within 3 weeks of PB and planning approval at FC - Planning approval period of 3 months - TVG application successful (at end of 24 month TVG period)	<b>Risk items</b>	<b>Cost Impact:</b> Based on: - sc4L estimate of re-design cost - sc4L estimate of planning application cost - actual cost to be open book - LCC 50% / sc4L 50% share of actual cost
Little London	Carlton Gate	Village Green areas	MJRPJTS : REGEN : LLPFI : 010	n/a	Apr-12	Major redesign of site required to achieve same number of units	Issue change instruction by [date]	- LCC complete demo works - services enabling works commence 4 months after the closure of TVG period - build works commence 8 months after the closure of TVG period	- redesign works 2 months - planning approval 3 months	- timing of TVG objection i.e. first month / last month - method of dealing with objection i.e. challenge - planning approval period i.e. longer than 3 months	£80,593

**Part 3**  
**Planning Contributions**

Site Name	Outline Planning Approval Ref No.	Condition No. & Description	Payment Obligation
Carlton Gate	Outline Application for residential development - Ref: 10/02792/LA (16.09.2010)	8. Prior to the commencement of development of phase 1 (125 social dwellings) a scheme including a timetable for implementation for the provision of highway improvements shall be submitted to and approved in writing by the LPA. Details:  b) Bus Stop improvements	Leeds City Council to pay costs of bus stop and bus shelter upgrades.
		33. Submission of Green Travel Plan	Leeds City Council to pay Green Travel Plan monitoring fee.
Holbeck Towers	Outline Application for residential development - Ref: 10/02780/LA (15.09.2010)	33. Submission of Green Travel Plan	Leeds City Council to pay Green Travel Plan monitoring fee.
165-183 Malvern Rd	Outline Application for residential development - Ref: 10/02776/LA (15.09.10) 165 - 183, 131 - 159 Malvern Road	29. Submission of Green Travel Plan	Leeds City Council to pay Green Travel Plan monitoring fee.
15-44 Coupland Place	Outline Application for residential development - Ref: 10/02769/LA (15.09.10) 15 - 44 Coupland Place		
1-21 Coupland Rd	Outline Application for residential development - Ref: 10/02772/LA (15.09.10) 1 - 21 Coupland Road		
10-64 Fairfax Rd	Outline Application for residential development - Ref: 10/02784/LA (15.09.10) 10 - 64 Fairfax Road		
53-133 Bismarck Street, 1-75 Bismarck Drive	Outline Application for residential development - Ref: 10/02788/LA (15.09.10) 53 - 133 Bismarck Street, 1 - 75 Bismarck Drive		
Folly Lane	Outline Application for residential development - Ref: 10/02786/LA (15.09.10) Folly Lane		
1 - 41, 2 - 20 St Lukes Green	Outline Application for residential development - Ref: 10/02774/LA (15.09.10) 1 - 41, 2 - 20 St Lukes Green		

## SCHEDULE 30

### Licences

#### Part 1

#### Demolition Sites

Site	Start on site date	Completion on site date	Drawing Ref.
Coupland Place	28/10/13	6/1/14	BH 06 804
Malvern Road	28/10/13	3/2/14	BH 11 804
Coupland Road	28/10/13	6/1/14	BH 07 804
Holbeck Towers	18/11/13	10/1/14	BH 01 804
St. Lukes Green	18/11/13	10/2/14	BH 12 804
Fairfax Road	18/11/13	3/2/14	BH 08 804
Bismarck Street	13/1/14	22/4/14	BH 05 804
Bismarck Drive	13/1/14	22/4/14	BH 04 804
Carlton Gate	13/1/14	21/2/14	LL 01 804
Carlton Bedsits	17/2/14	25/7/14	LL 07 804
Servia Bedsits	17/11/14	29/5/15	LL 05 804

## Part 2

### New Build Sites

Site	Start on site date	Completion on site date	Drawing Ref.
Folly Lane	20/1/14	3/2/16	BH 09 804
Coupland Place	6/1/14	13/1/16	BH 06 804
Malvern Road	3/2/14	13/4/16	BH 11 804
Coupland Road	6/1/14	9/6/16	BH 07 804
Holbeck Towers	10/1/14	18/3/17	BH 01 804
St. Lukes Green	10/2/14	12/9/16	BH 12 804
Fairfax Road	3/2/14	1/10/17	BH 08 804
Bismarck Street	22/4/14	29/7/17	BH 05 804
Bismarck Drive	22/4/14	17/6/18	BH 04 804
Carlton Gate	21/2/14	22/4/17	LL 01 804

### Part 3

#### Environmental Works Areas

Site	Start on site date	Completion on site date	Drawing Ref.
Meynell Heights	30/9/13	13/5/16	BH 17 804
East Holbeck Low (Meynells & Ninevehs)	5/1/15	11/3/17	BH 17 804
West Holbeck Low (Ingrams)	20/7/15	17/9/17	BH 16 804
West Holbeck Low (Balms)	28/9/15	13/8/17	BH 16 804
Carlton Low Rise	30/9/13	13/6/16	LL 07 804 LL 08 804
Carlton High Rise	30/9/13	23/4/16	LL08 804
Oatlands Play Area	28/4/14	5/11/17	LL 06 804
Oatlands High Rise	28/4/14	15/11/17	LL 06 804
Servia	5/1/15	18/3/17	LL 05 804
Oatlands Low Rise	10/8/15	3/9/17	LL 09 804
Lovell Low Rise	22/2/16	16/3/18	LL 10 804

## **Annex**

### **Licence Plans**

BH 01 804 - Holbeck Towers

BH 04 804 - Bismarck Drive

BH 05 804 - Bismarck Street

BH 06 804 - Coupland Place

BH 07 804 - Coupland Road

BH 08 804 - Fairfax Road

BH 09 804 - Folly Lane

BH 11 804 - Malvern Road

BH 12 804 - St. Lukes Green

BH 16 804 - West Holbeck Low (Ingrams), West Holbeck Low (Balms)

BH 17 804 - Meynell Heights, East Holbeck Low (Meynells & Ninevehs)

LL 01 804 - Carlton Gate

LL 05 804 - Servia Bedsits, Servia

LL 06 804 - Oatlands Play Area, Oatlands High Rise

LL 07 804 - Carlton Bedsits, Carlton Low Rise

LL 08 804 - Carlton Low Rise, Carlton High Rise

LL 09 804 - Oatlands Low Rise

LL 10 804 - Lovell Low Rise









## **APPENDIX 1**

### **City Council's Protocols**

Appendix 1A - Access Protocol

Appendix 1B - Tenant Waiver Protocol

Appendix 1C - Tenant's Improvements Protocol

Appendix 1D - Decant Protocol

Appendix 1E - Disrepair Actions Protocol

Appendix 1F - Adaptations Protocol

Appendix 1G - Tenant and Third Party Damage Protocol

Appendix 1H - Litigation Protocol

Appendix 1I - Trees Protocol

Appendix 1J - Marketing and Media Protocol

Appendix 1K - ICT Protocol

## **APPENDIX 1A**

### **Access Protocol**

#### **PART A – GENERAL**

##### **1. MEANING OF ACCESS REFUSAL**

1.1. Subject to paragraph 1.2 of this Part A, an Access Refusal Event shall be deemed to occur only in the following circumstances:

- 1.1.1 Where the Contractor notifies the City Council that a Tenant has informed the Contractor that they intend to be absent from the Dwelling for a period exceeding twenty (20) Working Days, and an alternate date cannot be agreed with the Tenant, in accordance with paragraph 5.3 of Part A;
- 1.1.2 Where the City Council is obliged to, but fails to take any necessary action to gain access to a Dwelling in the event of a Health and Safety liability notified by the Contractor, in accordance with paragraph 6 of Part A;
- 1.1.3 Where in accordance with paragraph 1.1(h) of Part B, a First Appointment has not been concluded earlier than forty (40) Working Days of the date on which Refurbishment Works for that Dwelling would have been due to commence;
- 1.1.4 Where in accordance with paragraph 1.1(k) of Part B, the kitchen survey has not been concluded earlier than forty (40) Working Days of the date on which the Refurbishment Works for that Dwelling would have been due to commence;
- 1.1.5 From the expiry of the fifth Working Day after the delivery of a 5 Day Letter if, in accordance with paragraph 1.2(f) of Part B contact has not been made by the Tenant in response to that 5 Day Letter;
- 1.1.6 Where, in accordance with paragraph 1.5 of Part B, the Tenant has failed to respond to an offer for a mutually convenient date for Refurbishment Works to be undertaken or the Tenant refuses such offer;
- 1.1.7 From the date when Refurbishment Works were due to commence, where, in accordance with paragraph 2.3 of Part B, no response is obtained from the Tenant, within two (2) Working Days of the delivery of the third No Access Letter in respect of such Refurbishment Works;

- 1.1.8 Where in accordance with paragraph 3.5 of Part B, the Contractor loses access to a Dwelling after having been permitted access to such Dwelling pursuant to Part B;
- 1.1.9 Where the Contractor and the Independent Certifier again fails to gain access to the Refurbishment Dwelling, despite having issued the second Inspection Notice, as referred to in paragraph 5(f) of Part B;
- 1.1.10 Where in accordance with paragraph 2.5 of Part C, the Tenant indicates that he is unwilling to allow access to a Dwelling after contact has been established by the RLO with any Tenant;
- 1.1.11 Where in accordance with paragraph 3.1 of Part C, contact is not made with the Tenant within ten (10) Working Days of the delivery of a Final Letter in accordance with paragraph 2.3 of Part C;
- 1.1.12 Where in accordance with paragraph 3.2 of Part C, the Tenant declines an offer of an appointment for such Planned Maintenance or Cyclical Maintenance and Renewal Works and it is not possible to agree a mutually convenient date for such appointment or the Tenant has failed to respond to an offer for an appointment within five (5) Working Days of such offer;
- 1.1.13 Where in accordance with paragraph 5.4 of Part C, the Contractor loses access to a Dwelling after having been permitted access to such Dwelling pursuant to Part C;
- 1.1.14 Where there is a Decant Refusal Event, which is deemed to be an Access Refusal Event, as referred to in paragraph 9 of Appendix 1D; or
- 1.1.15 If, after the Contractor has commenced carrying out the Refurbishment Works or Cyclical Maintenance or Repair Works, but the Tenant later refuses access, and the Contractor has continued to regain access in accordance with paragraph 3 of Part B or paragraph 5 of Part C,

and in each case such Access Refusal Event shall only occur and continue whilst the Contractor complies and continues to comply with all obligations which have a material effect in respect of such Access Refusal Event under this Access Protocol and the other provisions of this Agreement. For the avoidance of doubt no circumstances other than provided in this paragraph 1.1 shall be an Access Refusal Event for the purposes of this Protocol and this Agreement.

- 1.2. An Access Refusal Event does not occur or shall cease to occur:
- 1.2.1 in respect of refusals of access which arise where the Tenant does not want particular items of work to be undertaken to the relevant Dwelling because the Tenant wishes to retain his own or an existing fixture, fitting, works and/or Tenant Improvement in which case the provisions of the Tenant Waiver Protocol apply;
  - 1.2.2 not used;
  - 1.2.3 where access is refused for reasons resulting from the failure of the Contractor or any Contractor Related Party to perform its obligations in accordance with the terms of this Agreement or if access is refused resulting from an act or omission of the Contractor or any Contractor Related Party where such act or omission is not in accordance with Good Industry Practice;
  - 1.2.4 where the City Council notifies the Contractor that a Dwelling is Void and that such Dwelling is available for the Contractor to carry out any outstanding Dwelling Works, unless otherwise agreed in writing by the City Council's Representative the Access Refusal Event shall end on the date that the parties agree that such Dwelling Works are reprogrammed to commence in accordance with paragraph 1.4.4, and the Access Refusal Event shall only apply in respect of those Works or Services which the Contractor was unable to carry out as a result of the original Access Refusal;
  - 1.2.5 where the Contractor has failed in any material respect to supply any records relating to the Access Refusal Event requested by the City Council in accordance with paragraph 7.2 of this Part A.
  - 1.2.6 where the Contractor fails to commence any Refurbishment Works which remain outstanding six (6) months after the date when the Tenant confirms to the Contractor pursuant to paragraph 4.1(e) of Part B that access for Refurbishment Works would be granted.
  - 1.2.7 Notwithstanding any other provision of this Agreement, the Contractor shall not be required to carry out any outstanding Refurbishment Works in respect of a Dwelling, not commenced by the Contractor on or before the Cut-off Date, due to an Access Refusal Event.

1.3. Subject to paragraph 1.4, and unless expressly stated to be otherwise in this Access Protocol, including paragraph 1.2 of Part A of this Protocol in relation to Refurbishment Works, Planned Maintenance, and Responsive Repairs, once an Access Refusal Event commences, such Access Refusal Event shall be deemed to continue until the Contractor has completed such works in respect of the Dwelling for which the Access Refusal Event has occurred.

1.4. Where an Access Refusal Event occurs and:

1.4.1 the Tenant subsequently confirms to the Contractor pursuant to paragraph 4.1(e) of Part C that access for such works would be granted; or

1.4.2 the relevant Dwelling becomes Void;

the Contractor shall commence the Refurbishment Works, Planned Maintenance, and Responsive Repairs to which the Access Refusal Event related;

1.4.3 (where paragraph 1.4.1 applies) within six (6) months of such access being granted; or

1.4.4 (where paragraph 1.4.2 applies) in accordance with the timescales set out in Annex 18 of Volume 1 of the Output Specification.

## **2. THE CONTRACTOR'S PERSONNEL**

2.1. The Contractor shall employ two (2) levels of personnel who will make contact with Tenants in order to gain access to the individual Dwellings. These are:

(a) Resident Liaison Officers ("**RLO**"), who must use reasonable endeavours to contact each Tenant during the period commencing:

(i) at least eighty (80) Working Days before the Refurbishment Works are due to be undertaken to that Tenant's Dwelling; or

(ii) at least twenty (20) Working Days before any Planned Maintenance or Cyclical Maintenance and Renewal Works is undertaken

in accordance with this Access Protocol.

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.

- (b) Site Foremen, who will contact the Tenant on the day that Dwelling Works are due to commence to that Tenant's Dwelling. The Site Foremen may delegate part of the Site Foremen's responsibilities from time to time to suitable qualified personnel. References to "Site Foremen" or "Site Foreman" shall include a reference to such personnel to whom those responsibilities are delegated.

- 2.2. The Contractor shall ensure that the RLO and Site Foremen continue to use reasonable endeavours to liaise with such Tenant until completion of the Dwelling Works to each Tenant's Dwelling including the completion of any items on the relevant Snagging List, such reasonable endeavours to include the requirements of Part B in relation to access for Refurbishment Works and the requirements of Part C in relation to access for Planned Maintenance or Cyclical Maintenance and Renewal Works.

### **3. MAKING CONTACT**

- 3.1. In addition to the direct forms of contact referred to in paragraph 2 above, the Contractor shall 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 Dwelling Works to each Dwelling.
- 3.2. The Contractor shall also arrange necessary access for Tenants to a dedicated - language line or to a locally available specialist special needs support as the case may require in accordance with the Contractor's Proposals. These services will be provided as soon as reasonably practicable following the Contractor becoming aware that the Tenant or his household may require such services.

### **4. PROCEDURE FOR THE REFURBISHMENT WORKS AND PLANNED MAINTENANCE AND CYCLICAL MAINTENANCE AND RENEWAL WORKS**

- 4.1. The Contractor will at all times use all reasonable endeavours to undertake Dwelling Works to each Dwelling on:

- a) a continuous basis without any undue interruption to the Dwelling Works as planned and previously communicated to the Tenant of each Dwelling. Where it is not reasonably possible to avoid such interruptions the RLO will use reasonable endeavours to liaise with all affected Tenants and/or their households to give as much advance notice as possible of any such interruptions and to arrange mutually convenient appointments to continue with the Dwelling Works, as the case may be; and
- b) a neighbouring property basis, if it is reasonably practicable to sequence the Refurbishment Works, and Planned Maintenance and Cyclical Maintenance and Renewal Works, so as to proceed from one Dwelling to the next in the street.

## **5. MATTERS TO BE REPORTED TO THE CITY COUNCIL**

5.1 In the event that contact is made with a Tenant of a Dwelling pursuant to any of the provisions of this Access Protocol or otherwise and the Contractor is informed of (or otherwise becomes aware of) any of the following circumstances the Contractor shall notify the City Council of this information in writing within five (5) Working Days of becoming aware of:

- a) Such Tenant is an At Risk Tenant who has either requested or is (in the reasonable opinion of the Contractor) likely to require Decant or other special arrangements in order for the Contractor to gain access to carry out some, or all, of the Dwelling Works in which case the provisions of the Decant Protocol shall also apply;
- b) Such Tenant has requested Adaptations to be carried out to the Dwelling or particular Adaptations to the Dwelling are required (in the reasonable opinion of the Contractor) in which case the provisions of the Adaptations Protocol shall also apply; and
- c) Such Tenant has informed the Contractor that they intend to be absent from the Dwelling for a period exceeding four (4) weeks.

5.2 Notwithstanding the Contractor's obligation set out in paragraph 5.1(c) of this Part A, if the Contractor is informed by the Tenant that they intend to be absent from the Dwelling for a period exceeding four (4) weeks, then the Contractor shall use reasonable endeavours to reprogramme the Dwelling Works for the relevant



Dwelling, so that the Dwelling Works are carried out at a time, other than the period of such absence, suitable for both the Contractor and the Tenant.

5.3 If, despite the Contractor using such reasonable endeavours, the Contractor is not able to reprogramme the Dwelling Works so that the Dwelling Works are carried out at a time, other than the period of such absence, suitable for both the Contractor and the Tenant, then the Contractor will use reasonable endeavours to agree with such Tenant a mutually convenient alternative date for the Dwelling Works to be commenced as soon as reasonably practicable but in any event within the following six (6) months (unless the relevant Tenant agrees a later alternative date). An Access Refusal Event will be deemed to have taken place where an alternative date has not been agreed pursuant to this paragraph 5.3.

5.4 An Access Refusal Event will be deemed to have taken place where an alternative date has not been agreed within 10 Working Days of the Tenant informing the Contractor that they intend to be absent from the Dwelling for a period exceeding four (4) weeks, as referred to in paragraph 5.1(c).

## **6. HEALTH AND SAFETY**

6.1 If the Contractor believes that there are:

6.1.1 significant Health & Safety liabilities or risks in respect of a Dwelling (whether that knowledge of the Contractor comes about through the Contractor carrying out surveys, or through the Contractor's concerns by not being able to gain access to the Dwelling); or

6.1.2 other potential liabilities to the City Council or the Contractor relating to the City Council or the Contractor relating to third party claims or damage to the Dwellings or adjoining properties,

then immediately upon the Contractor becoming aware, or reasonably suspecting such issue or liability, the Contractor shall take all available steps to gain access to such Dwelling in accordance with this Protocol as soon as reasonably practicable having regard to paragraph 6 of the Decant Protocol, and having regard to the housing management functions retained by the City Council. For the avoidance of doubt, nothing in this Protocol shall oblige the Contractor to enforce the terms of a Tenant's Tenancy Agreement.

- 6.2 The Contractor shall inform the City Council of such action referred to in paragraph 6.1 above as soon as reasonably practicable and shall within five (5) Working Days of request, supply to the City Council all relevant information reasonably requested by the City Council, including records maintained in accordance with paragraph 7, required in order to enable the Council to take legal action.
- 6.3 The Contractor shall fully cooperate with the City Council taking any related legal action in relation to this paragraph 6 in accordance with the Litigation Protocol.
- 6.4 For the avoidance of doubt, if the Contractor notifies the City Council of significant Health and Safety liabilities and issues arising out of an Access Refusal Event in relation to a Dwelling, then:
- (a) the Contractor shall review and ensure all protocol actions are taken where reasonably possible and identify any protocol actions that have not been taken;
  - (b) the Contractor shall where appropriate:
    - (i) make an appointment with the Tenant out of office hours;
    - (ii) make contact with the carer;
    - (iii) offer an appointment on a weekend;
    - (iv) organise a visit by the RLO at the time of completing Refurbishment Works to adjoining Dwellings.
  - (c) the City Council shall take all necessary actions to gain access to such Dwellings;
  - (d) subject to the Contractor complying with paragraph 6.4(e), if the City Council fails to take such action referred to in paragraph 6.4(c), the City Council shall compensate the Contractor for any additional costs in accordance with the procedures contained in Part 6 (Other Adjustments) of Schedule 5 (Payment Mechanism); and
  - (e) the Contractor shall continue to mitigate such liabilities and issues and attempt to gain access notwithstanding the City Council's obligations pursuant to paragraph 6.4(c).

## **7. ACCESS REFUSAL EVENT RECORDS**

7.1 The Contractor shall maintain the following information and records in a form suitable for admissibility for court proceedings;

- a) the Access Refusal Records;
- b) written letters and First Appointment Forms and a record of the dates and times of each delivery and/or attempted access by the Contractor;
- c) written interview notes of each interview with the Tenant regarding their refusal to grant access conducted pursuant to paragraph 1.3 of Part B;
- d) any correspondence or other communications received from Tenants or representatives of Tenants relating to the Dwelling Works; and
- e) the documents set out in Appendix 2 to these Protocols.

7.2 The Contractor will supply the copies of the documents referred to in paragraph 7.1 above to the City Council on two (2) Working Days' notice and shall also make the Access Refusal Record available to the City Council on a monthly basis, unless otherwise agreed in writing with the City Council's Representative.

## **8. CITY COUNCIL ASSISTANCE**

8.1 Subject to paragraph 6.1 of this Part A of the Access Protocol, in exceptional circumstances, the Contractor may request the assistance of the City Council to gain access to a Dwelling. Any assistance provided by the City Council will be at the City Council's sole discretion and on a goodwill basis (and any failure to assist and resulting failure by the Contractor to fail to gain access to any Dwelling shall not be a breach of this Agreement or this Protocol by the City Council) and the co-operation of the City Council shall not limit or restrict the Contractor responsibilities pursuant to this Protocol, or this Agreement.

## **9. LEASEHOLDERS**

9.1. To the extent that there are Leasehold Dwellings where elements of Dwelling Works are to take place pursuant to this Agreement and access is required, this Protocol will also apply in respect of such access requirements and references to Tenant shall include reference to Leaseholders of such Leasehold Dwellings (and for the

avoidance of doubt references to Dwelling include reference to a Leasehold Dwellings), save that:

- a) the Contractor shall comply with all requirements for consultation with Leaseholders in accordance with clause 28.1 (Leaseholders) of this Agreement prior to seeking access;
- b) paragraph 1.2.4 of this Part A and all other references to commencing work to a Dwelling which is Void will not apply;
- c) for the purpose of paragraph 5.1 (a) of this Part A, an At Risk Tenant shall include a Leaseholder or a member of the Leaseholder's household residing at the Leasehold Dwelling at the time when the Refurbishment Works are to take place if he would fulfil the definition of At Risk Tenant, if he were a Tenant; and
- d) paragraphs 5.1(b) and 5.1(c) of this Part A, shall not apply.

## **10. EFFECT OF ACCESS REFUSAL EVENT**

- 10.1 An Access Refusal Event in relation to a Dwelling shall, where applicable be both a Relief Event and an Excusing Event under the terms of this Agreement.
- 10.2 For the avoidance of doubt, notwithstanding paragraph 5.1 above the Contractor shall have no relief from its obligations under this Agreement and this Protocol to complete the Works to any other Dwelling which is not the subject of an Access Refusal Event.
- 10.3 Unless expressly stated to be otherwise in this Access Protocol, including paragraph 1.2 of Part A of this Protocol, in relation to Refurbishment Works, Planned Maintenance, and Responsive Repairs, once an Access Refusal Event commences, such Access Refusal Event shall be deemed to continue until the Contractor has completed such works in respect of the Dwelling for which the Access Refusal Event has occurred.

## **11. TENANT'S RIGHT TO AN ACCELERATED PROCESS**

- 11.1 Notwithstanding any other provision of the Access Protocol, the City Council agrees that the Tenant has a right to request for an acceleration of the process set out in this Access Protocol, to enable the Dwelling Works to be carried out by the Contractor

without requiring the Contractor to comply with the provisions of Part B of this Access Protocol. If the Tenant requests an acceleration of the process, the Contractor is under no obligation to agree to an acceleration of the process.

- 11.2 If the Tenant elects to opt out of the process set out in this Access Protocol, then the Contractor shall obtain reasonable evidence of the Tenant's election, and reasonable evidence that the Contractor has explained to the Tenant, the effect of such acceleration of the process set out in this Access Protocol, including details of the new accelerated process. The Contractor shall not, by its act or omission promote the acceleration of the process set out in this Access Protocol, if such act or omission would not be in the Tenant's best interests.
- 11.3 If the Tenant elects to accelerate the process of the Access Protocol process set out in Part B, then the Contractor shall provide details to the City Council of the acceleration agreed with the Tenant, and the new accelerated process.
- 11.4 The City Council agrees that it will be deemed that the Contractor has discharged all of its obligations under paragraphs 1.1 and 1.2 of Part B or paragraph 1.1 of Part C of this Access Protocol (whichever is relevant), insofar as those obligations are the same as those agreed with the Tenant as part of the new accelerated process, provided that the Contractor has complied with such new accelerated process.

## **12. THE PROCESS CHART**

- 12.1 The parties agree that the process charts which form part of the Contractor's Proposals ("Process Charts") set out the process that the Contractor is expected to undertake in relation to the matters set out in these Protocols. However a failure to comply with the process charts shall not give rise to any breach on the part of the Contractor, except to the extent that:
- a) the Contractor has breached a provision of the Protocols themselves; or
  - b) these Protocols expressly incorporate parts sections of the Process Charts.

## **13. CUT-OFF DATE**

For the purpose of this Access Protocol, the "Cut-Off Date" shall be the date that is six (6) months before the Expiry Date.

## PART B - REFURBISHMENT WORKS

The procedure set out in this Part B will apply to the Refurbishment Works (which term shall include major items of lifecycle renewal and refurbishment including without limitation replacement of roofs, wiring, heating systems, kitchens and bathrooms for the purposes of this Protocol only).

Furthermore, reference in this Part B to “contact” being made with a “Tenant”, shall be deemed to include the Tenant or a member of the Tenant's household who is eighteen (18) years or older and who has a family or close personal connection with the Tenant.

1. The Contractor shall procure that:

- 1.1 a) The RLO will send a letter (the “**100 Day Letter**”) to each individual Tenant not less than one hundred (100) Working Days before the Refurbishment Works are due to commence on that Tenant’s Dwelling. The 100 Day Letter shall introduce the Contractor, set out a broad timetable for the Refurbishment Works, and request to carry out a survey of the Dwelling against the Availability Standards (Full). The 100 Day Letter shall state that such survey is required to be carried out no later than twenty (20) Working Days after receipt of the 100 Day Letter. The RLO shall use reasonable endeavours to deliver the 100 Day Letter personally to establish face-to-face contact.
- b) Where contact is made with the Tenant pursuant to the 100 Day Letter, the RLO shall discuss the scope of the Refurbishment Works and a surveyor shall conduct the survey of the relevant Dwelling against the Availability Standard eighty (80) Working Days before the Refurbishment Works are due to commence on that Tenant’s Dwelling (the “First Appointment”). The RLO shall complete a form detailing the discussions during the First Appointment (the “**First Appointment Form**”).
- c) Following the completion of the survey pursuant to paragraph 1.1(b) of this Part B, the RLO will send a letter (the “**60 Day Letter**”) to each individual Tenant not less than sixty (60) Working Days before the Refurbishment Works are due to commence on that Tenant’s Dwelling. The RLO shall use reasonable endeavours to deliver the 60 Day Letter personally.
- d) The 60 Day Letter shall include all the information set out in the First Appointment Form together with (without limitation) the following information as a minimum requirement:

- (i) the scheduled timing and sequence of the Refurbishment Works to the Dwelling;
  - (ii) the type of work which will be carried out at the Dwelling and any items over which the Tenant may exercise a choice as to the type of fixture or fitting;
  - (iii) contact details for the RLO;
  - (iv) details of the level of access required to the Dwelling as discussed during the First Appointment;
  - (v) any special arrangements that the Tenant will reasonably require in order for the Contractor to have access to the Dwelling and undertake the Refurbishment Works, for example any special arrangements for At Risk Tenants, as discussed during the First Appointment;
  - (vi) a copy of the Contractor's complaints handling procedure;
  - (vii) the aspects of the Dwelling that can be improved and upgraded by the Contractor (the "**Improvement Elements**");
  - (viii) an appointment date for a meeting between the Tenant and the Contractor at which the Tenant can consider and choose any options in respect of the Improvement Elements (the "**Information and Choice Event**") not less than fifty (50) Working Days before the Refurbishment Works are due to commence at the Dwelling; and
  - (ix) if one of the Improvement Elements is the kitchen, proposals to agree a time for a survey to be carried out by the kitchen surveyor.
- e) If the Tenant attends the Information and Choice Event, the Contractor shall issue a letter recording the Tenant's choices (the "**Choice Letter**") not less than thirty (30) Working Days before the Refurbishment Works are due to commence at the relevant Dwelling which shall set out the:
- (i) choices made by the Tenant (or deemed choices pursuant to paragraph 1.1(g)) in relation to the Improvement Elements;

- (ii) arrangements in relation to an induction appointment (the “**Induction Appointment**”) which shall occur no later than twenty (20) Working Days before the agreed date for carrying out the Refurbishment Works; and
  - (iii) all information set out in the 60 Day Letter that remains unchanged by paragraph 1.1(e)(i) of this Part B.
- f) If the Tenant fails to attend the Information and Choice Event as arranged pursuant to paragraph 1.1(d)(viii) of this Part B, the RLO shall within 5 Working Days of the Tenant failing to attend the Information and Choice Event visit the Tenant and identify any concerns, arrange for any additional information to be provided to the Tenant, arrange a liaison meeting if required..
- g) If the Tenant and the Contractor fail to reach agreement at the Information and Choice Event as arranged pursuant to paragraph 1.1(d)(viii) of this Part B or pursuant to paragraph 1.1(f), the Contractor shall acting reasonably determine the choices for and on behalf of the Tenant, having regard to the best interests of the Tenant, and issue the Choice Letter to the Tenant with the deemed choices and the provisions of paragraph 1.1(e) shall apply.
- h) Not used
- i) If contact has not been made with the Tenant by the RLO following the delivery of the 100 Day Letter, the RLO shall send a letter (the “Reminder Letter”) to such Tenant not less than sixty (60) Working Days before the Refurbishment Works are due to commence at the relevant Dwelling. The Reminder Letter shall contain the same information as in the 100 Day Letter as set out in paragraph 1.1(a) above. The RLO shall endeavour to deliver this letter personally and make face to face contact with the relevant Tenant. The Reminder Letter shall also request that such Tenant or a member of such Tenant’s household who is eighteen (18) years or older and who has a family or close personal connection with the Tenant, make urgent contact to arrange the First Appointment.
- j) Where, despite the Contractor complying with the terms of this Protocol a First Appointment has not been concluded in respect of a Dwelling within forty (40) Working Days of the date on which the Refurbishment Works on that Dwelling would have been due to commence (as contemplated in paragraph 1.1(a) of this Part B) there shall be an Access Refusal Event and the Contractor shall be entitled to resequence the Refurbishment Works in respect of such Dwelling. The Contractor



shall send a letter to the Tenant of such Dwelling indicating that attempts have been made to arrange a First Appointment for the Refurbishment Works and that the Refurbishment Works to such Dwelling will be postponed until a later date.

- k) If the kitchen survey does not occur earlier than forty (40) Working Days before the Refurbishment Works are due to commence on a Dwelling due to failure or refusal of the Tenant to grant access to the Dwelling there shall be an Access Refusal Event and the Contractor shall be entitled to resequence the Refurbishment Works in respect of such Dwelling. The Contractor shall send a letter to the Tenant of such Dwelling indicating that attempts have been made to arrange a kitchen survey for the Refurbishment Works and that the Refurbishment Works to such Dwelling will be postponed until a later date.
- j) Notwithstanding any other provision of this Access Protocol, the Contractor shall not be required to issue any letters referred to in this paragraph 1.1, on or after the Cut-Off Date.

1.2 If an Induction Appointment has been agreed:

- a) The Contractor and the Tenant shall attend the Induction Appointment;
- b) Following the Induction Appointment referred to in paragraph 1.2(a) above (and notwithstanding whether or not the Tenant attended such Induction Appointment), the RLO shall write a letter (the "20 Day Letter") to the Tenant not less than twenty (20) Working Days before the Refurbishment Works are scheduled to commence to a Tenant's Dwelling.
- c) The 20 Day Letter shall set out (without limitation):
  - (i) the dates and time when access to the Dwelling is required to carry out the Refurbishment Works and the scheduled timing and sequence of those works;
  - (ii) the number of days required to carry out the Refurbishment Works;
  - (iii) any planned breaks in the timing and/or sequence of those works which is expected to be greater than one (1) day (excluding non Working Days);
  - (iv) details of the type of work which will be carried out at the Dwelling;

- (v) details of the level of access required to the Dwelling;
  - (vi) any other relevant information, including, but not limited to, any special arrangements made for an At Risk Tenant during the period when access is required;
  - (vii) contact details for the RLO;
  - (viii) a request for the Tenant or a member of the Tenant's household who is eighteen (18) years or older and who has a family or close personal connection with the Tenant, to make contact with the RLO to confirm that these arrangements are acceptable; and
  - (ix) the information and communication pack.
- d) If contact has not been made with a Tenant following the delivery of the 20 Day Letter, a follow up letter (the "**10 Day Letter**") will be issued to the Tenant not less than ten (10) Working Days prior to the date when the Refurbishment Works are due to commence to that Tenant's Dwelling. The RLO shall make one attempt to deliver the 10 Day Letter personally and make face to face contact. The 10 Day Letter shall request that the Tenant or a member of the Tenant's household who is eighteen (18) years or older and who has a family or close personal connection with the Tenant should make urgent contact to arrange access for the Refurbishment Works.
- e) Whether or not contact has been made between the RLO and the Tenant as a result of the 20 Day Letter or 10 Day Letter a further letter (the "**5 Day Letter**") shall be issued to the Tenant not less than five (5) Working Days before the date on which the Refurbishment Works are due to commence (as contemplated in paragraph 1.1(a) of this Part B) to that Tenant's Dwelling. The RLO shall make one attempt to deliver the 5 Day Letter personally. The 5 Day Letter shall confirm the arrangements referred to in paragraph 1.2 (c) above and shall request that the Tenant or a member of the Tenant's household who is eighteen (18) years or older and who has a family or close personal connection with the Tenant makes urgent contact to arrange access for the Refurbishment Works.
- f) If within five (5) Working Days of delivery of the 5 Day Letter contact has not been made between the RLO and the Tenant in response to that letter, there

shall be an Access Refusal Event from the expiry of the fifth day after the delivery of the 5 Day Letter.

- g) Where contact is made between the RLO and the Tenant informs the RLO that the Refurbishment Works are scheduled to take place during a period when the Tenant is absent from the Dwelling during a period of holiday of no more than four (4) weeks or there are pressing personal circumstances, such as family bereavement or illness which would make the carrying out of the Refurbishment Works at the scheduled date unreasonable, the Contractor will use reasonable endeavours to agree with such Tenant a mutually convenient alternative date for the Refurbishment Works to be commenced as soon as reasonably practicable but in any event within the following six (6) months (unless the relevant Tenant agrees a later alternative date). For the avoidance of doubt and subject to paragraph 1.5 below an Access Refusal Event will not be deemed to have taken place where an alternative date has been agreed pursuant to this paragraph 1.2(g).

1.3. Where contact has been established by the RLO with the Tenant at any time prior to the commencement of Refurbishment Works and the Tenant indicates that he is unwilling to allow access to the Dwelling as requested then the RLO shall take all reasonable steps to establish the reason for the Tenant's refusal and use reasonable endeavours to agree with the Tenant a mutually convenient date for access to the Dwelling to be granted by the Tenant. The RLO shall discuss with the Tenant the following matters:

- (i) alternative dates convenient to the Tenant;
- (ii) amended timescales (including resequencing to allow the work to be completed at a later date); and
- (iii) whether there are any alternative work arrangements or other arrangements required by the Tenant in order to allow access which the Contractor can reasonably agree.

1.4. The Contractor shall keep a record of any correspondence or discussions between the RLO and Tenant pursuant to paragraph 1.2 (g) or 1.3 above, such interview record to be completed during the interview process and the RLO to use reasonable endeavours to agree the interview record with the Tenant as an accurate record of the meeting.

1.5. Where the RLO has used reasonable endeavours to offer the Tenant a mutually convenient date for the Refurbishment Works to be undertaken in accordance with paragraph 1.2 (g) or 1.3 above and the Tenant either:

- a) fails to respond to such offer within five (5) Working Days of the date when the offer was made; or
- b) refuses such offer,

an Access Refusal Event will occur in respect of that Dwelling and such event shall be recorded as such by the Contractor in the Contractor's Access Refusal Record from the date when the offer was made.

1.6 Where contact is made following the delivery of the 5 Day Letter and the Tenant agrees to permit the Contractor access to his Dwelling (notwithstanding the provisions of paragraph 1.3 if applicable), the provisions of paragraph 2 of this Part B shall apply.

## **2. ACCESS DURING REFURBISHMENT WORKS**

2.1 Where the Tenant permits access to his Dwelling pursuant to paragraph 1 above, the Site Foreman will attend the Dwelling on the morning that the Refurbishment Works are due to commence in respect of such Dwelling. This will allow the Tenant or members of his household to meet those delivering the Refurbishment Works and ask any last minute queries. If no response is received, a letter ("**No Access Letter**") will be delivered to that Dwelling in the course of the same day stating that access was not possible, asking the Tenant to make immediate contact with either the RLO or the site office and informing the Tenant that the Site Foreman will attend again the next Working Day. This letter will be multi-lingual if the Tenancy or any other information reasonably available to the Contractor suggests that the Tenant and/or any member of the household belong to an ethnic minority. The RLO should endeavour to deliver the letter personally and attempt to make face-to-face contact.

2.2 If the relevant Tenant does not allow access to his Dwelling pursuant to the first No Access Letter referred to in paragraph 2.1 above, the procedure set out in paragraph 2.1 above will be repeated the next Working Day.

2.3 If the relevant Tenant does not respond pursuant to the procedure set out in paragraphs 2.1 and 2.2 above, the procedure contained in 2.1 above will be repeated for a third consecutive Working Day. In the event that the relevant Tenant does not

allow access to his Dwelling within two (2) Working Days of the delivery of the third No Access Letter, this shall constitute an Access Refusal Event in respect of the relevant Dwelling which shall be deemed to have occurred on the date when the Refurbishment Works were to have commenced (as contemplated in paragraph 1.1(a) of this Part B) and a letter will be left by the RLO in the same manner as previously. This letter shall confirm that attempts were made to access the Dwelling to undertake the Refurbishment Works, confirm that the Dwelling will be subject to resequencing and shall request the Tenant or a member of the Tenant's household who is eighteen (18) or over and who has a family or close personal connection with the Tenant to make urgent contact to arrange resequencing.

- 2.4 For the avoidance of doubt, where the Tenant allows the Contractor to access his Dwelling pursuant to the Site Foreman's attendance at such Dwelling or pursuant to a No Access Letter as provided for in this paragraph 2, the Contractor shall carry out the Refurbishment Works in accordance with the provisions of this Agreement.

### **3. ACCESS REFUSAL FOLLOWING CONTACT**

- 3.1 Where the Tenant agrees to permit access to his Dwelling pursuant to this Part B, whether or not the Refurbishment Works have commenced, and the Tenant subsequently indicates that he is unwilling to allow access to the Dwelling, the Contractor shall undertake the procedure set out at paragraph 1.3 of this Part B, but will not be required to do so more than once each month for the first six months.
- 3.2 If access is not regained after the end of such six month period, then the Contractor shall undertake the procedure set out at paragraph 1.3 once every six months thereafter until access is regained.
- 3.3 Once access is regained to the Dwelling, then:
- a) if the Tenant to the Dwelling when access is regained is the same tenant, as the Tenant to the Dwelling when access was lost, the Contractor shall continue to comply with the Access Protocol on and from the stage in Part B of this Access Protocol at which such access was lost; or
  - b) if the Tenant to the Dwelling when access is regained is not the same tenant, as the Tenant to the Dwelling when access was lost, the Contractor shall recommence the procedure for gaining access as set out in this Part B of the Access Protocol.

3.4 Notwithstanding the Contractor's obligations set out in this paragraph 3, the Contractor shall use all reasonable endeavours to mitigate the effect of losing such access.

3.5 Loss of such access by the Contractor, after access is granted pursuant to this paragraph 3, shall be an Access Refusal Event subject to the Contractor having complied with and continuing to comply with all obligations in this paragraph 3 which have a material effect.

#### 4. ACCESS REFUSAL EVENT PROCEDURE

4.1 In the event that there is an Access Refusal Event as referred to in paragraphs 1.1.1 to 1.1.9 (inclusive) of Part A, the following procedure will be followed:

- a) The Contractor shall keep a record of all Access Refusal Events (the "**Access Refusal Record**"). Each Access Refusal Event will be recorded on the Access Refusal Record within two (2) Working Days of the Access Refusal Event taking place. All works that are the subject of an Access Refusal Events so recorded will be subject to resequencing. The Contractor shall send a letter to the Tenant at each Dwelling subject to an Access Refusal Event informing the Tenant that the Refurbishment Works to that Dwelling have been postponed.
- (b) The Contractor shall reschedule the Refurbishment Works at a Dwelling which are subject to an Access Refusal Event to each subsequent phase of the Refurbishment Works until such Refurbishment Works at the relevant Dwelling are complete (unless the Contractor reasonably considers that the carrying out of such Refurbishment Works at that Dwelling in such phase is not reasonably practicable). The RLO will continue to take all reasonable steps to attempt to make contact with the Tenants or members of their households entered on the Access Refusal Record, which obligation shall be deemed to be met if the Contractor seeks to contact such Tenant at least once every six months for the purpose of gaining access to carry out the Refurbishment Works. Such contact shall require the Contractor to arrange and agree the First Appointment. Where contact is made the Contractor will then deliver letters and conduct the First Appointment in accordance with paragraph 1 above, save that the Contractor may at its discretion shorten any of the time periods set out therein.

- c) Not used.
- d) Notwithstanding any other provision in this paragraph 4.1, following the issue of the Certificate of Availability (Full Standard) in respect of the final Refurbishment Works, the Contractor shall continue to use reasonable endeavours to obtain access to Dwellings which remain on the Access Refusal Record. The use of reasonable endeavours shall require the RLO to make face-to-face contact with the Tenants or a member of their households (and failing which, shall deliver a letter to the Tenant) at least once each year with the intent of gaining access and completing the Refurbishment Works in the manner set out in this Protocol. After consent is granted to access the Dwelling for such purposes the Contractor shall return to the Dwelling to commence the Refurbishment Works to the Dwellings as soon as reasonably practicable but in any event within six (6) months of such consent being granted.
- e) Where at any time following the issue of the Certificate of Availability (Full Standard) in respect of the Refurbishment Works, the Tenant indicates to the Contractor that he has changed his mind and access for the Refurbishment Works will be given, this shall be recorded in the Access Refusal Record and the Contractor shall commence the Refurbishment Works within six (6) months of that date. Where the Contractor is notified in writing by the City Council that a Tenant has changed his mind and shall allow access to his Dwelling, the Contractor shall commence the Refurbishment Works as soon as reasonably practicable but in any event within six (6) months of the date when the City Council so notifies the Contractor.
- f) If the Contractor has received written notification from the City Council that a Dwelling is Void, the Contractor shall undertake works to the Dwelling in accordance with the procedure and time period for work to Voids set out at Annex 18 in the Output Specification unless otherwise agreed in writing with the City Council Representative.

## **5. CERTIFICATION BY THE INDEPENDENT CERTIFIER**

- a) On completion of the Refurbishment Works, the Contractor shall procure that the Independent Certifier certifies the Refurbishment Works, in accordance with Clause 20.2.

- b) No less than five (5) Working Days prior to the Independent Certifier requiring access to the Refurbishment Dwelling, in order to certify completion of the Refurbishment Works, the Contractor shall notify the Tenant in writing of the need to gain access to the Refurbishment Dwelling in order to certify proper completion of the Refurbishment Works, and stating a date and time on which such access is required (“**Inspection Notice**”).
- c) The Independent Certifier and the Contractor shall attend the Refurbishment Dwelling, on the date and time specified in the Inspection Notice.
- d) If the Tenant is not in attendance at the Refurbishment Dwelling at the date and time specified in the Inspection Notice and the Independent Certifier and the Contractor cannot otherwise gain access, or if the Tenant is in attendance, but does not grant the Contractor and the Independent Certifier access to the Refurbishment Dwelling:
  - (i) the Contractor shall record the date and time of the attempt to inspect the Refurbishment Dwelling; and
  - (ii) the Contractor shall record the reasons for not gaining access to the Refurbishment Dwelling during the attempted inspection.
- e) Within a further five (5) Working Days after the attempt to inspect the Refurbishment Dwelling, the Contractor shall again issue another Inspection Notice, and paragraphs c) and d) above shall again apply.
- f) If the Contractor and the Independent Certifier again fails to gain access to the Refurbishment Dwelling, despite having issued the second Inspection Notice, the Contractor shall notify the City Council of the information set out in paragraph 5(d) above, and there shall be a deemed Access Refusal Event in respect of that Refurbishment Dwelling.
- g) If the Contractor and the Independent Certifier do gain access to the Refurbishment Dwelling in accordance with paragraphs 5(d), 5(e) or 5(h), then they shall carry out the inspection of the Refurbishment Dwelling, for the purpose of certifying completion of the Refurbishment Works, in accordance with the Good Industry Practice.
- (h) Notwithstanding any other provision in this paragraph 5 and without prejudice to the Contractor’s obligations under paragraph 4.1 of this Part B, following



the deemed issue of a Certificate of Availability in respect of the relevant Refurbishment Dwelling, the Contractor shall continue to use reasonable endeavours to obtain access for the Independent Certifier to such Refurbishment Dwelling on two (2) occasions not less than one month apart.

## **PART C - PLANNED MAINTENANCE AND CYCLICAL MAINTENANCE AND RENEWAL WORKS ACCESS PROTOCOL**

The procedure set out in this Part C (Planned Maintenance or Cyclical Maintenance and Renewal Works Access Protocol) will apply to both Planned Maintenance and Cyclical Maintenance and Renewal Works (which term shall exclude major items of lifecycle renewal and refurbishment including without limitation replacement of roofs, wiring, heating systems, kitchens and bathrooms for the purposes of this Protocol only).

Furthermore, reference in this Part C to “contact” being made with a “Tenant”, shall be deemed to include the Tenant or a member of the Tenant's household who is eighteen (18) years or older and who has a family or close personal connection with the Tenant.

1.1 The Contractor shall procure that:

- a) The RLO will write a letter (the “**20 Day Letter**”) to each individual Tenant not less than twenty (20) Working Days before:
  - (i) the Planned Maintenance or Cyclical Maintenance and Renewal Works is due to commence at his Dwelling informing him that either access will be required to carry out a survey prior to the commencement of the Planned Maintenance or Cyclical Maintenance and Renewal Works or that Planned Maintenance or Cyclical Maintenance and Renewal Works will commence in twenty (20) Working Days time (as appropriate); and / or
  - (ii) a Periodic Survey is programmed to take place at the Dwelling.

Wherever possible the RLO shall make no less than two attempts to deliver the letter personally to establish face to face contact.

- b) The 20 Day Letter shall set out (without limitation):
  - (i) the dates when access to the Dwelling is required to carry out the Planned Maintenance or Cyclical Maintenance and Renewal Works, survey and/or Period Survey;
  - (ii) the number of hours or days required to carry out the Planned Maintenance or Cyclical Maintenance and Renewal Works, survey or Periodic Survey;

- (iii) details of the type of work which will be carried out at the Dwelling;
  - (iv) details of the level of access required to the Dwelling;
  - (v) contact details for the RLO to allow the Tenant or his household to contact the RLO;
  - (vi) details of the Contractor's complaints handling procedure;
  - (vii) a request for details of any special arrangements that the Tenant will reasonably require, for example any special arrangement for At Risk Tenants.
- c) A further reminder letter of the required access will be sent five (5) Working Days prior to the start of the Planned Maintenance and or Cyclical Maintenance and Renewal Works or prior to the date of survey or Periodic Survey work and if at this date contact has not been made between the RLO and the Tenant, the RLO will endeavour to deliver the reminder letter personally. Where the Planned Maintenance or Cyclical Maintenance and Renewal Works is to be directly carried out without the need of a survey the Tenant will be requested to make urgent contact;
- d) Where survey work has been carried out pursuant to paragraph 1.1(c) above, a further letter giving five (5) Working Days' notice will be forwarded to the relevant Tenant prior to the Planned Maintenance or Cyclical Maintenance and Renewal Works actually commencing.

## **2. ACCESS DURING PLANNED MAINTENANCE OR CYCLICAL MAINTENANCE AND RENEWAL WORKS**

- 2.1 If access is not gained to a Dwelling at which Planned Maintenance or Cyclical Maintenance and Renewal Works (which for the purposes of this paragraph 2 shall include any associated survey works or a Periodic Survey), a letter (the "**No Access Letter**") will be left at such Dwelling requesting the Tenant to make immediate contact with the RLO and confirming that the RLO will contact the Tenant within five (5) Working Days. This No Access Letter 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.

- 2.2 Where a No Access Letter is left at a Dwelling pursuant to paragraph 2.1 above, the procedure in paragraph 2.1 will be repeated the after five (5) Working Days regardless of whether a response to the No Access Letter is obtained. In the event that access is not available on the second visit by the RLO to a Dwelling, a further No Access Letter will be left at such Dwelling. The Contractor will advise the City Council of this second No Access event no later than five (5) Working Days after the second visit to such Dwelling.
- 2.3 If the Tenant does not respond to either of the two (2) No Access Letters referred to in paragraphs 2.1 and 2.2, then not less than five (5) Working Days after the City Council has been informed of the same, a letter (the “**Final Letter**”) will be sent to the Tenant confirming that attempts have been made to access the Dwelling to undertake the Planned Maintenance or Cyclical Maintenance and Renewal Works, and that the Planned Maintenance or Cyclical Maintenance and Renewal Works would now be postponed until such time as the Dwelling is vacated by the Tenant unless the Tenant responds to the Final Letter within ten (10) Working Days.
- 2.4 Where contact is made with a Tenant pursuant to paragraphs 2.1 and 2.2 or otherwise, and the Tenant informs the RLO that the Planned Maintenance or Cyclical Maintenance and Renewal Works is scheduled to take place whilst the Tenant is absent from the Dwelling during a period of holiday of no more than four (4) weeks or there are pressing personal circumstances (including without limitation a family bereavement or illness) which would make the carrying out of the Planned Maintenance or Cyclical Maintenance and Renewal Works at the scheduled date unreasonable, the Contractor will agree with a Tenant a mutually convenient alternative date for the Planned Maintenance or Cyclical Maintenance and Renewal Works to be undertaken. Such date shall be as soon as reasonably practicable but in any event no longer than six (6) months from the date of such agreement between the Contractor and Tenant unless the nature of the Planned Maintenance or Cyclical Maintenance and Renewal Works or the Tenant’s circumstances make this impracticable. For the avoidance of doubt an Access Refusal Event will not be deemed to have taken place.
- 2.5 Where contact has been established with the Tenant at any time prior to the planned commencement of Planned Maintenance or Cyclical Maintenance and Renewal Works (as set out in the 20 Day Letter) and the Tenant indicates that he is unwilling to allow access to the Dwelling as requested, then the RLO shall take all reasonable steps to establish the reason for the Tenant’s refusal and endeavour to get the

Tenant to agree to access on a mutually convenient date. The RLO shall discuss with the Tenant the following matters:

- (i) alternative dates convenient to the Tenant;
- (ii) amended timescales; and
- (iii) whether there are any alternative work arrangements or other arrangements required by the Tenant in order to allow access which the Contractor can reasonably agree.

2.6 The Contractor shall keep a record of the interview between the RLO and the Tenant referred to in paragraph 2.5 above when mutually convenient dates are discussed in accordance with paragraphs 2.4 and 2.5 above, such interview record to be completed during the interview process and the RLO to use reasonable endeavours to agree the interview record with the Tenant as an accurate record of the meeting.

2.7 Where the Tenant allows the Contractor to access his Dwelling pursuant to the Site Foreman's attendance at such Dwelling or pursuant to a No Access Letter as provided for in this paragraph 2, the Contractor shall carry out the Planned Maintenance or Cyclical Maintenance and Renewal Works in accordance with the provisions of this Agreement.

### **3. ACCESS REFUSAL EVENTS**

3.1 In the event that contact between the RLO and the Tenant is not made within ten (10) Working Days of the delivery of the Final Letter in accordance with paragraph 2.3 of Part C an Access Refusal Event will have occurred.

3.2 If contact is made between the RLO and the Tenant and the RLO has used reasonable endeavours to offer the Tenant a mutually convenient date for the Planned Maintenance or Cyclical Maintenance and Renewal Works to be carried out, in accordance with paragraphs 2.4 and/or 2.5 of Part C above but the Tenant declines the appointment offered and it is not possible to agree on a mutually convenient date for such appointment or the Tenant fails to respond to the offer for an appointment made within five (5) Working Days of the date when the offer is made an Access Refusal Event will have occurred.

3.3 If an Access Refusal Event occurs pursuant to paragraph 3.1 or 3.2 of Part C of this Protocol, and as a consequence of the Access Refusal Event:

- a) additional costs are incurred by the Contractor in carrying out the Planned Maintenance or Cyclical Maintenance and Renewal Works in respect of the relevant Dwelling at a later date or additional Responsive Repairs are required in respect of the relevant Dwelling, which would not have been so incurred but for the Access Refusal Event, such additional costs shall be paid by the City Council in accordance with the procedures contained in Part 6 (Other Adjustments) of the Schedule 5 (Payment Mechanism) provided such additional costs are reasonable and have been agreed by the City Council in advance of the Contractor undertaking such Planned Maintenance or Cyclical Maintenance and Renewal Works, or Responsive Repairs, and provided that the Contractor has used all reasonable endeavours to mitigate such costs, including, but not limited to, continuing to comply with all other maintenance obligations that the Contractor has under this Agreement. In the event of disagreement over the extent of additional costs this matter will be referred to the Dispute Resolution Procedure; or
- b) there is a cost saving to the Contractor in carrying out the Planned Maintenance or Cyclical Maintenance and Renewal Works in respect of the relevant Dwelling at a later date, or foregoing a cycle or cycles of Planned Maintenance or Cyclical Maintenance and Renewal Works, and such a cost saving would not have occurred but for the Access Refusal Event, such cost saving shall be paid by the Contractor to the City Council. In the event of disagreement over the extent of additional costs this matter will be referred to the Dispute Resolution Procedure

#### **4. ACCESS REFUSAL EVENT PROCEDURE**

4.1 In the event that there is an Access Refusal Event as referred to in paragraphs 1.1.10 to 1.1.13 (inclusive) of Part A, the following procedure will be followed:

- a) The Contractor shall keep a record of all Access Refusal Events (“**Access Refusal Record**”). Each Access Refusal Event will be recorded on the Access Refusal Record within two (2) Working Days of the Access Refusal Event taking place.
- b) The Contractor will take all reasonable steps to attempt to make contact with all Tenants at Dwellings recorded on the Access Refusal Record, or members

of their households at least once each year and all such contact made will be recorded in writing;

- c) Where the Tenant changes his mind, and notifies the Contractor that access for the Planned Maintenance or Cyclical Maintenance and Renewal Works will be given, this shall be recorded in the Access Refusal Record and the Contractor shall commence the Planned Maintenance or Cyclical Maintenance and Renewal Works within six (6) months of the date of such notification, or where the Contractor is notified in writing by the City Council that a Tenant will now grant access to his Dwelling, the Contractor shall commence the Planned Maintenance or Cyclical Maintenance and Renewal Works within six (6) months of the date when the City Council so notified the Contractor.
- d) For the avoidance of doubt where the Contractor is notified by the City Council that a Dwelling is Void, the Contractor shall undertake the Planned Maintenance or Cyclical Maintenance and Renewal Works pursuant to Annex 16 of the Output Specification unless it has been agreed in writing with the City Council's Representative that the time for completion of the Planned Maintenance or Cyclical Maintenance and Renewal Works will be extended beyond that allowed in the Output Specification for work during Voids.

## **5. ACCESS REFUSAL FOLLOWING CONTACT**

- 5.1 Where the Tenant agrees to permit access to his Dwelling pursuant to this Part C, whether or not the Planned Maintenance or Cyclical Maintenance and Renewal Works have commenced, and the Tenant subsequently indicates that he is unwilling to allow access to the Dwelling, the Contractor shall undertake the procedure set out at paragraph 2.5 of this Part C, but will not be required to do so more than once each month for the first six months.
- 5.2 If access is not regained after the end of such six month period, then the Contractor shall undertake the procedure set out in paragraph 2.5 of this Part C, thereafter until access is regained.
- 5.3 Notwithstanding the Contractor's obligations set out in this paragraph 5, the Contractor shall use all reasonable endeavours to mitigate the effect of losing such access.

5.4 Loss of such access by the Contractor, after access is granted pursuant to this paragraph 5, subject to the Contractor having complied with and continuing to comply with all obligations in this paragraph 5 which have a material effect.



## **PART D - RESPONSIVE REPAIRS PROTOCOL**

- 1.1 This Part D sets out the access procedure to be employed in respect of Tenants and/or Leaseholders with respect to Responsive Repairs to the Dwellings and Leaseholder Dwellings.
- 1.2 Wherever appropriate and in accordance with Annex 14 of the Output Specification the Contractor shall make arrangements for access and/or appointments to undertake all such works with the Tenant and/ or Leaseholder upon receipt of a request for a Responsive Repair.
- 1.3 Where the Contractor is unable to gain access to a Dwelling or Leaseholder Dwelling to carry out Responsive Repairs because the Tenant or Leaseholder (as appropriate) or other member of the Tenant or Leaseholder's household is not present at the relevant Dwelling or Leaseholder Dwelling, the Contractor will leave a calling card at the Dwelling. The card will contain the following information:
  - a) the time of the Contractor's call (which shall be at the time of the appointment where an appointment has been made);
  - b) the type of work;
  - c) a request that the Tenant or Leaseholder, or a member of the Tenant's or Leaseholder's household (who is over the age of 18), contact the Contractor within twenty four (24) hours so that a mutually convenient appointment can be made;
  - d) the contact details for the Contractor;
- 1.4 This card will be multi-lingual if the tenancy agreement or lease or other information available to the Contractor suggests that the Tenant or Leaseholder and his household belong to an ethnic minority.
- 1.5 The Contractor shall also, if necessary, arrange access to a 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 Leaseholder and his household may need them.

- 1.6 The Contractor shall keep a record of dates and times of delivery of calling cards and attempted access and the record shall be made available to City Council inspection on two (2) Working Days' notice.
- 1.7 Where any repair request is closed following two unsuccessful attempts by the Contractor to gain access in accordance with paragraph 1.3 above the City Council will be informed in writing in the Monthly Monitoring Report and the repair request shall for the purposes of the performance monitoring of repairs performance be treated as never having occurred. Where such repair request is closed, a Works or Services Denial Event shall be deemed to have occurred.

## APPENDIX 1B

### Tenant Waiver Protocol

#### 1. INTRODUCTION

- 1.1 The approach detailed within this Tenant Waiver Protocol will be used by the Contractor in respect of any Dwelling Works to manage instances where a Tenant (reference to which for the purposes of this Protocol shall include reference to Leaseholders where relevant) wishes to waive elements of those Dwelling Works at the relevant Dwelling. It is intended to complement the City Council's and the Contractor's existing procedures, as well as satisfy the City Council that all reasonable efforts have been made to explain to the Tenant the implications of his decision not to have the relevant elements of the Dwelling Works undertaken at his 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 withdrawn.
- 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 Dwelling Works.

#### 2. THE CONTRACTOR APPROACH

- 2.1 This Protocol shall apply in cases where the Tenant does not want particular items of the Dwelling Works to be undertaken at the relevant Dwelling on the grounds that he wishes to retain his own or an existing fixture, fitting, works and/or Tenant Improvement in which case, subject to paragraphs 2.1A and 3.5 of this Protocol, the Tenant will be entitled to refuse the undertaking of the work. The expression ("**Tenant Waiver(s)**") is used to refer to such refusals). For the avoidance of doubt, all other refusals to allow the Dwelling Works to be undertaken at the relevant Dwelling are the subject of the Access Protocol.
- 2.1A If it is reasonably determined by the City Council that the Tenant is seeking a Tenant Waiver for reasons which are linked to the failure of the Contractor or any Contractor Related Party to perform its obligations in accordance with the terms of this Agreement or for reasons linked to an act or omission of the Contractor or any Contractor Related Party where such act or omission is not in accordance with

Good Industry Practice, then this Tenant Waiver Protocol shall not apply and the Access Protocol shall apply.

2.2 In all instances, the Contractor shall 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 City Council and the Contractor that, in exceptional circumstances, there will be instances where Tenants will be reluctant for particular items of work to be carried out. In such instances, this Tenant Waiver Protocol will apply.

2.3 The Contractor shall ensure that the RLO shall liaise with the Tenant in relation to all Tenant Waivers throughout the term of this Agreement.

### 3. **THE CONSULTATION PERIOD**

3.1 Prior to the relevant Dwelling Works commencing at any particular Dwelling, the RLO will explain to the Tenant the implications of the relevant Dwelling Works to be carried out at the relevant Dwelling in accordance with the requirements of the Access Protocol.

3.2 Should any Tenant Waiver(s) be raised, the RLO will explain to the Tenant the implications of not having the relevant elements of the Dwelling Works undertaken. The RLO will also explain the relevant Tenant Waiver Understanding/Obligation document (appended to this Protocol at Annex 1) (the "**Tenant Waiver Form**") to the Tenant.

3.3 The Contractor will leave the relevant Tenant Waiver Form with the Tenant for completion. The Contractor shall collect the completed form from the Tenant, having first allowed the Tenant five (5) Working Days to review the implications as explained to it by the RLO. No Tenant Waiver(s) shall have effect until the earlier of a particular Tenant having agreed to, completed and signed a Tenant Waiver Form, or continues to refuse to sign such a form, after the Contractor has carried out each of the steps set out in the Process Chart in relation to obtaining evidence of such Tenant Waiver from the Tenant, after which the Contractor is entitled to, and does, leave the relevant Tenant Waiver Form with the Tenant and the Contractor then writes to the Tenant (and sends a copy to the City Council) to confirm that a deemed Tenant Waiver has occurred. When the Tenant has done this, a Tenant Waiver Event will occur provided the Contractor has complied with the provisions of this Protocol which have a material effect.

- 3.4 All Tenant Waiver(s) will be reported on a Monthly Monitoring Report by the Contractor to the City Council giving written details of the Dwelling, the Dwelling Work which was refused and the fixture, fitting or work or Tenant Improvement which the relevant Tenant wishes to retain.
- 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 City Council's obligations under the relevant Tenancy Agreement or Long Lease or under common law; and/or
  - 3.5.4 be detrimental to any other elements of the fabric of the relevant Dwelling;
  - 3.5.5 cause deterioration to any element of the relevant Dwelling below any of the Availability Standards (Initial); and/or
  - 3.5.6 related to essential works which, if carried out would result in a health and safety hazard (including without limitation the replacement of the gas boiler and electrical rewiring works),

then the Contractor shall not complete the Tenant Waiver Form, and shall use all reasonable endeavours to persuade the Tenant to withdraw the requested Tenant Waiver. If the Tenant does not agree to withdraw the Tenant Waiver, the Contractor shall notify the City Council as soon as reasonable practicable and paragraph 6 of Part A of the Access Protocol shall apply.

#### 4. **TENANT WAIVER DURING THE WORKS**

- 4.1 During the relevant Dwelling Works at the Dwelling the Tenant may raise further Tenant Waiver(s). The RLO and any other Contractor personnel who are in contact with the Tenants will encourage Tenants not to request Tenant Waiver(s) and accordingly prevent the relevant Dwelling Works from being carried out. However should the Tenant raise any further Tenant Waiver(s), the RLO will again explain to the Tenant the implications of not having the relevant elements of the Dwelling Works completed as planned and the Tenant will be taken through the relevant Tenant Waiver Form as outlined in paragraph 3 above.

4.2 Subject to the Contractor complying with the provisions of this Protocol that have a material effect, if the Tenant does raise a Tenant Waiver after the date that is 40 Working Days prior to the agreed date for commencement of the Dwelling Works (or during the period that the Contractor is carrying out the Dwelling Works):

- (i) the City Council agrees that an Access Refusal Event will be deemed to have occurred in relation to the Dwelling; and
- (ii) the City Council agrees that there may be costs aborted by the Contractor, due to the late Tenant Waiver Event. The City Council will pay such costs aborted in accordance with the procedures contained in Part 6 (Other Adjustments) of the Schedule 5 (Payment Mechanism) provided such costs are reasonable and have been agreed by the City Council in advance of the Contractor undertaking such Dwelling Works and provided that the Contractor has used all reasonable endeavours to mitigate such costs. In the event of disagreement over the extent of additional costs this matter will be referred to the Dispute Resolution Procedure.

## 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 The City Council notifies the Contractor in writing that the relevant Dwelling becomes a Void, in which case the Tenant Waiver Event ceases on the date when the notice is given and the relevant Dwelling Works will be completed during the Void Period.

5.1.2 If as a result of any inspection process it becomes apparent that any of the Tenant's existing fixtures, fittings or works and/or Tenant Improvements which are the subject of the Tenant Waiver Form have not been maintained by the Tenant and represent a health and safety hazard, or could cause damage to other elements of the Dwelling and/or adjoining Dwellings or other third party property (as relevant); The Contractor shall notify the City Council in writing immediately and record the revocation in the Monthly Monitoring Report, the Tenant Waiver(s) shall be deemed withdrawn. On notification of the City Council by the Contractor, an Access Refusal Event shall be deemed to have occurred in relation to the Dwelling which shall end when the Contractor has completed the Dwelling Works in respect of that

Dwelling. The rectification works shall be carried out immediately in accordance with the Output Specification following the City Council notifying the Contractor that the City Council has obtained access to the Dwelling in accordance with Paragraph 3.5. If the costs of such rectification work are attributable to Tenant Damage and/or Third Party Damage, the Tenant and Third Party Damage Protocol shall apply.

5.1.3 The Tenant informs the Contractor that the Tenant wishes the relevant Dwelling Works which the Tenant previously refused under this Protocol to be carried out in which case the Tenant Waiver shall be deemed to be revoked but the relevant Tenant Waiver Event shall continue until the date for completion of the Dwelling Works as set out at paragraphs 5.2(b), 5.2(c) and 5.2(d) (as appropriate).

5.2 Where a Tenant Waiver is revoked pursuant to this paragraph 5, the applicable process to be adopted by the Contractor is as follows:

- a) Record the revocation of the Tenant Waiver in respect of the relevant Dwelling Works in the Monthly Monitoring Report within two (2) Working Days of the revocation taking place;
- b) Carry out and complete the relevant Dwelling Works if these are Refurbishment Works before the date when it is expected that all other Refurbishment Works will have been completed in respect of the relevant Project Site (other than those works subject to Works or Services Denial Events);
- c) If the relevant Dwelling Works are Refurbishment Works and the final Refurbishment Works have been completed save for Dwellings subject to Works or Services Denial Events, and then the Contractor shall commence the relevant Dwelling Works within six (6) months of the date of the revocation recorded in the Monthly Monitoring Report.
- d) If the relevant Dwelling Works are Planned Maintenance or Cyclical Maintenance and Renewal Works, the Contractor shall commence the relevant works within six (6) months of the date of the revocation recorded in the monthly Payment and Performance Report.

5.3 Where the Contractor incurs costs over and above the costs of doing the relevant Dwelling Works:

- a) at the time when such Dwelling Works would have been carried out, but for the granting of the Tenant Waiver; or
- b) due to the Tenant raising a Tenant Waiver after the date that is 40 Working Days prior to the agreed date for commencement of the Dwelling Works (or during the period that the Contractor is carrying out the Dwelling Works), or alternatively there are costs aborted due to the Tenant raising such a Tenant Waiver,

the City Council will pay such additional costs in accordance with the procedures contained in Part 6 (Other Adjustments) of the Schedule 5 (Payment Mechanism) provided such additional costs are reasonable (taking into account whether it was reasonable to incur such costs in respect of such Dwelling Works, whether the pricing of any additional out of sequence or additional repair costs are reasonable by reference to relevant works set out in the Catalogue where applicable) and have been agreed by the City Council in advance of the Contractor undertaking such Dwelling Works and provided that the Contractor has used all reasonable endeavours to mitigate such costs, including deducting any savings made as a result of such Tenant Waiver. In the event of disagreement over the extent of additional costs this matter will be referred to the Dispute Resolution Procedure.

## **6. TENANT WAIVER RECORDS**

6.1 Copies of the following documents will be made available to the City Council for inspection on two (2) Working Days' notice;

- a) Written interview notes detailing the reason for the requested Tenant Waiver and the Contractor's response;
- b) Any correspondence or other communications received from Tenants or representatives of Tenants relating to the requested Tenant Waiver;
- c) Any further information reasonably required by the City Council for the purpose of assessing a request for a Tenant Waiver of which it has been notified by the Contractor or otherwise.



6.2 Without limiting paragraph 6.1 of this Appendix 1B, the Contractor shall provide the City Council with updates of the Tenant Waiver Records on a monthly basis.

## Annex 1

### TENANT WAIVER FORM

#### Tenant Waiver Understanding / Obligation

##### Tenants Own Fittings

I, [ *insert name* ] (the "**Tenant**") of the address stated below (the "**Dwelling**"), confirm that I do not wish the elements of the planned Dwelling Works as expressly detailed below to be carried out at the Dwelling ("**Scope of Tenant Waiver**").

I confirm and agree that:

1. I am waiving my rights to the relevant elements of the planned Dwelling Works from being carried out at the Dwelling.
2. any Tenant Improvements or works 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, in accordance with the terms of my Tenancy Agreement with the [*Leeds City Council*] (the "**Council**");
3. if, as a result of any failure to maintain and/or replace any Tenant Improvements or works which are the subject of this Tenant Waiver Form, any damage or losses that are sustained in relation to any fixtures, fittings or any other elements of the Dwelling including those 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;
4. The proposed Dwelling Works described below will not now be completed at the Dwelling;
5. I am the recognised Tenant of the Dwelling; and
6. The Contractor may withdraw the waiver detailed within this Tenant Waiver Form at any time.
7. Nothing in this Tenant Waiver prevents me from seeking to withdraw the waiver at any time in the future. I note however that neither the Contractor nor the City Council will be under any obligation to undertake the works included into the Waiver subject

to the general repairing responsibilities contained in Clause 2E of my Tenancy Agreement.

8. Nothing in this Tenant Waiver in any way absolves me from the obligation to notify Leeds City Council of the Tenant Improvements or works which have resulted in my requesting a Tenant Waiver from the Contractor as set out in Clause 2E of my Tenancy Agreement.

ADDRESS:

[insert full address details for Tenant]

SCOPE OF TENANT WAIVER:

[Describe nature of Dwelling Works not to be undertaken]

SIGNED BY THE TENANT: .....

SIGNED BY: ..... ON BEHALF OF THE CONTRACTOR

DATE: ...../...../.....

**TENANT WAIVER FORM**

**Tenant Waiver Understanding / Obligation**

**Existing Council Fittings**

I, [ *insert name* ] (the "**Tenant**") of the address stated below (the "**Dwelling**"), confirm that I do not wish the elements of the planned Dwelling Works as expressly detailed below to be carried out at the Dwelling ("**Scope of Tenant Waiver**").

I confirm and agree that:

1. I am waiving my rights to the relevant elements of the planned Dwelling Works from being carried out at the Dwelling,
2. The proposed Dwelling Works described below will not now be completed at the Dwelling;
3. I am the recognised Tenant of the Dwelling; and
4. The Contractor may withdraw the waiver detailed within this Tenant Waiver Form at any time.
5. Nothing in this Tenant Waiver prevents me from seeking to withdraw the waiver at any time in the future. I note however that neither the Contractor nor the City Council will be under any obligation to undertake the works included into the Waiver subject to the general repairing responsibilities contained in Clause 2E of my Tenancy Agreement.

ADDRESS:

[insert full address details for Tenant]

SCOPE OF TENANT WAIVER:

[Describe nature of Dwelling Works not to be undertaken]

SIGNED BY THE TENANT: .....

SIGNED BY: ..... ON BEHALF OF THE CONTRACTOR

DATE: ...../...../

## APPENDIX 1C

### Tenant's Improvements Protocol

1. Where a Tenant (reference to which for the purposes of this Protocol shall include reference to Leaseholders where relevant) does not want an item of the Dwelling Works to be undertaken at that Tenant's Dwelling because the Tenant wishes to retain his own or an existing fixture, fitting or Tenant's Improvement the Contractor shall comply with the terms of the Tenant Waiver Protocol and for the avoidance of doubt the provisions of this Protocol shall not apply.
2. Where a Tenant makes an application to the City Council for consent to a Tenant's Improvement pursuant to section 97 Housing Act 1985 (whether or not such application is retrospective) and the City Council is considering granting approval to such a request, the City Council shall inform the Contractor in all cases where it is reasonably foreseeable that the grant of such a consent may impact upon the Contractor's obligations as set out under this Agreement. In such circumstances, the City Council shall give written notice to the Contractor of the following:
  - a) full details of the application for consent referred to above;
  - b) whether the City Council reasonably believes that a joint inspection of the Dwelling by City Council's and Contractor's surveyors is required in respect of the Tenant's Improvement; and
  - c) any information reasonably available to the City Council as to whether planning permission or building regulation approval is being applied for by the Tenant.
3. Within ten (10) Working Days of any joint inspection (where required by either party) or otherwise within twenty (20) Working Days of the City Council giving the Contractor notice in accordance with paragraph 2 above, the Contractor (acting reasonably) shall state in writing to the City Council:
  - a) what impact (if any) the proposed Tenant's Improvement would have on the delivery of relevant Dwelling Works;
  - b) what impact (if any) the proposed Tenant's Improvement would have on delivery of the Services;

- c) whether the City Council should grant consent to the Tenant's Improvement and if so what conditions (if any) the Contractor reasonably considers should be imposed upon such consent;
  - d) any increases or decreases in the Contractor's costs which will occur as a result of the implementation of the Tenant's Improvement by the Tenant; and
  - e) any inspection required following completion of the Tenant's Improvement, together, the "Contractor's Response".
4. The City Council shall consider the information provided by the Contractor pursuant to paragraph 3 above. The Contractor shall provide any assistance or further information required by the City Council in order to assess the Contractor's Response.
  5. The City Council shall confirm in writing to the Contractor as soon as practicable whether or not the Contractor's Response is agreed as proposed or any reasonable changes to those proposals which the City Council would seek. If it is not possible to reach agreement in relation to the Contractor's Response within a reasonable time the City Council may proceed to authorise the request for Tenant's Improvement and refer the issue to the Dispute Resolution Procedure.
  6. If the Contractor does not respond to a written notice given by the City Council pursuant to paragraph 2 above within twenty (20) Working Days the City Council may proceed with consideration of the Tenant's request for Tenant's Improvement without further reference to the Contractor.
  7. The City Council shall inform the Contractor in writing as soon as reasonably practicable when the Tenant's Improvement has been implemented.
  8. All Tenant's Improvements will be reported on a Monthly Monitoring Report by the Contractor to the City Council giving written details of the Dwelling and Tenant's Improvement.
  9. Any reasonable increases or decreases in the Contractor's costs incurred by the Contractor as a direct result of the Tenant's Improvement and reasonably agreed by the City Council shall be paid by the City Council to the Contractor in accordance with Part 6 (Other Adjustments) of the Schedule 5 (Payment Mechanism) and such

costs, where relevant, shall be calculated by reference to equivalent costs set out in the Catalogue.

10. This Protocol is without prejudice to the right of either the City Council or the Contractor to request a Change under the Change Protocol.
11. If a Tenant has made an application for a Tenant's Improvement, and the City Council consents without reference to the Contractor, and such consent causes a detriment to the delivery of Works or Services, this shall constitute an Excusing Event, except that if the Tenant Improvement is being carried out at the same time that the Contractor is carrying out Refurbishment Works at that Dwelling, which prevents or interferes with the Contractor's ability to progress or carry out such Refurbishment Works, then a Compensation Event will be deemed to have occurred.

## **APPENDIX 1D**

### **Decant Protocol**

#### **1 APPLICATION OF DECANT PROTOCOL**

- 1.1 This Protocol applies to Dwellings to which Refurbishment Works are undertaken during the Refurbishment Works Period and in respect of Dwelling where Planned Maintenance or Cyclical Maintenance and Renewal Works are carried out.
- 1.2 Decant will only be necessary in exceptional circumstances as the Contractor shall use all reasonable endeavours to undertake works with the Tenant in situ and in accordance with paragraph 3.1 of this Protocol.
- 1.3 Decant shall not normally be necessary in respect of Leasehold Dwellings other than in exceptional circumstances, where it may be required this Protocol shall apply.
- 1.4 The definitions of 'Tenant' and 'At Risk Tenant' shall include Leaseholders and their households (and for the avoidance of doubt the definition of Dwellings includes Leasehold Dwellings) for the purpose of this Protocol.

#### **2 THE SUPPLY OF PROPERTIES**

- 2.1 Notwithstanding paragraph 2.3 of this Decant Protocol, the Contractor shall provide dwellings for Decant ("Decant Dwellings") at any particular time which:

- 2.1.1 are sufficient in size and number and suitable for the needs of At Risk Tenants and/or other Tenants (as appropriate);

- 2.1.2 comply with the provisions of Annex 13 of the Output Specification (including, without limitation, compliance with the criteria in respect of the location of the Temporary Alternative Accommodation which shall also apply to the Decant Dwellings),

in order to meet the need for Decant identified by the Contractor and agreed by the City Council in accordance with this Protocol.

- 2.2 The Contractor will be the sole arbiter of health and safety risk and shall make such assessment of health and safety risk (in which case the provisions of paragraph 6 applies) and as to whether the relevant Tenant is an At Risk Tenant as is reasonable in all the circumstances taking into account the matters of fact and degree set out in



paragraph 5 of this Protocol. The Contractor shall consider any representations made to the Contractor by the City Council as to health and safety risk or Fact and Degree.

- 2.3 On or before the Initial Services Commencement Date (Refurbishment), the Contractor shall issue the City Council with a programme (“Dwelling Allocation Programme”). The Dwelling Allocation Programme shall set out a reasonable number of Dwellings and the types of Decant Dwellings, that the Contractor proposes be provided by the City Council to the Contractor, at the Contractor’s cost, for the purpose of Decanting Tenants. Such programme shall be based on quarterly intervals.
- 2.4 The City Council and the Contractor shall no more frequently than on a two (2) monthly basis to review the Dwelling Allocation Programme (or at such other intervals reasonably agreed by the parties).
- 2.5 If the Contractor requires any Decant Dwellings at any time, that is greater than the number given the particular type, proposed in the Dwelling Allocation Programme for that time, then the Contractor shall notify the City Council as soon as practicable of the additional Decant Dwellings required.
- 2.6 The City Council shall use its reasonable endeavours to provide the Contractor with the Decant Dwellings specified in the Dwelling Allocation Programme including such additional required Decant Dwellings referred to in paragraph 2.5.
- 2.7 Where the City Council has provided a Decant Dwelling pursuant to paragraph 2.6:
  - 2.7.1 the Contractor shall pay the rent and housing service charge in respect of such Decant Dwelling to the City Council;
  - 2.7.2 for the avoidance of doubt where the Decant Dwelling is a Dwelling, the Contractor shall provide the Services at such Decant Dwelling and where the Decant Dwelling is not a Dwelling there shall be no obligation on the Contractor to provide the Services to such Decant Dwelling (subject to any agreement to carry out modifications or Adaptations pursuant to clause 2.7.3); and
  - 2.7.3 the Contractor shall carry out any required modifications to such Decant Dwelling which are reasonably agreed with the City Council, except that if such modification is an Adaptation, then the Adaptations Protocol shall apply.

2.8 Subject to paragraph 2.9 of this Decant Protocol, the parties acknowledge that there shall be no recourse for the Contractor where the City Council fails to provide Decant Dwellings in accordance with paragraph 2.1 and 2.6 of this Decant Protocol.

2.9 If:

2.9.1 the City Council has used its reasonable endeavours to provide the Decant Dwellings pursuant to this paragraph 2, and fails to do so; and

2.9.2 the Contractor has used its reasonable endeavours to source Decant Dwellings or reprogramme the Dwelling Works to a time when a Decant Dwelling is available, and has failed to do so ,

then a Works or Services Denial Event shall be deemed to have occurred from the date that the Dwelling Works were programmed to be carried out. Such Works or Service Denial Event shall cease on the earlier of the date that a subsequent Decant is carried out and the date that the Dwelling Works are commenced.

For the purposes of this paragraph 2.9, "reasonable endeavours" shall mean that the City Council has provided the Contractor with a complete list of Voids in the possession of the City Council for the last two (2) Contract Months, and an explanation, with reasonable details, as to why such Voids cannot be provided by the City Council to the Contractor as Decant Dwellings.

2.10 The City Council shall be solely responsible for agreeing the terms and conditions of occupation by the Tenant of any Decant Dwellings, with such Tenant.

2.11 The Contractor shall be responsible for agreeing the terms and conditions of occupation by the Tenant of any Decant Dwellings provided by the Contractor, subject to those terms and conditions being approved by the City Council (such consent not to be unreasonably withheld).

### **3 THE PROCESS OF DECANT**

3.1 The Contractor shall minimise disruption to Tenants and their households and shall programme Dwelling Works to avoid the need for Decant. Dwelling Works will be programmed and scheduled to be completed as quickly as 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.

- 3.1.1 It is the responsibility of the Contractor to conclude in every case whether the provision of temporary arrangements is suitable and appropriate and to meet its health and safety obligations.
- 3.1.2 The Contractor is aware that Decanting people from their own dwelling into temporary 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 of Decanting.
- 3.1.3 The Contractor shall also, if necessary, arrange access to a 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.

#### **4 TRIGGERS FOR DECANT**

4.1 There are a number of trigger points that would mean that Decant was necessary for a Tenant and his household into temporary accommodation:

- 4.1.1 Tenant request (the Contractor will not move people who do not want to move, unless there is a Health and Safety concern);
- 4.1.2 Fact & Degree in accordance with paragraph 5;
- 4.1.3 Health & Safety in accordance with paragraph 6; or

and the Contractor shall not Decant a Tenant in any other circumstances unless it is otherwise reasonably agreed between the parties that Decant is required.

4.2 In the event that a Health & Safety concern exists, then the Contractor shall use all reasonable endeavours to persuade the Tenant to Decant. If the Tenant does not agree to Decant, the Contractor shall as soon as reasonably practicable notify the City Council, and the provisions of paragraph 6 shall apply.

#### **5 FACT AND DEGREE**

5.1 The Contractor shall make an assessment of whether an individual Tenant or a member of his household requires Decant based on “fact and degree” comprising to the two variables of “tenant vulnerability” (see paragraph 5.3 below) and “level of

disruptive works” (see paragraph 5.4 below) and shall take account of the views expressed in this respect by the City Council and other relevant agencies.

5.2 The Contractor shall take all reasonable steps to identify possible vulnerable cases within each phase of the programme as quickly as possible. This shall be achieved through the following process:

5.2.1 The Contractor shall submit a Works Delivery Plan to the City Council in accordance with clause 15.2 (Works Delivery Plan) of this Agreement which will, without limitation, inform the City Council of the Contractor’s proposed programme and in particular the Dwellings where the Contractor will be undertaking the relevant works.

5.2.2 The City Council will use reasonable endeavours to provide the Contractor with all relevant records and information within the City Council’s possession concerning any agencies known to be providing support in respect of any Tenant or member of a Tenant’s household whom the City Council considers may be an At Risk Tenant, such information to be provided before the Contractor conducts the First Appointment for access pursuant to Parts B and C of the Access Protocol.

5.2.3 If at the First Appointment or otherwise the Contractor reasonably considers there to be an At Risk Tenant who is likely to require special arrangements to be made for access, the RLO shall discuss any alternative dates for access which are convenient to the Tenant, amended timescales (including resequencing to allow the work to be completed later, where necessary) and whether there are any alternative work arrangements or other arrangements required by the Tenant in order to allow access which the Contractor can reasonably agree.

5.2.4 As soon as reasonably practicable following the First Appointment or at any other stage when the Contractor first becomes aware of a relevant At Risk Tenant, the Contractor shall inform the City Council in writing. If the Contractor has not been supplied with City Council records and information referred to in paragraph 5.2.2 then the Contractor may request the City Council to supply such records and information.

5.2.5 The Contractor shall convene a case conference to which the City Council and all other relevant agencies shall be invited for the purpose of

discussing the need for a Decant and any special arrangements that should be made. This shall take place on each occasion that a possible At Risk Tenant is identified, unless the City Council agrees in writing that such a conference is not necessary.

- 5.3 *Tenant Vulnerability:* The vulnerability of a particular Tenant or a household member shall be established where the Tenant or a member of the Tenant's household member is deemed to be an At Risk Tenant, which must be assessed by the Contractor, through a medical opinion. The Contractor may request that the Tenant or household member provides such medical opinion.
- 5.4 *Level of Disruptive Works:* The Contractor must also consider how the vulnerability of a potential At Risk Tenant is affected by the schedule of Dwelling Works for the individual's Dwelling. The Contractor shall decide whether or not, despite the At Risk Tenant's vulnerability, the standard respite arrangements offered by the Contractor 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 is not necessary.
- 5.5 The Contractor recognises that Decant Dwellings available for decanting into are likely be standard units without Adaptations and may not be suitable for persons who require accommodation with Adaptations, for example, those with severe levels of disability. Where the need for Decant is identified for such persons, the Contractor will provide the City Council with not less than 120 Working Days' notice of such a need. The City Council shall, within this period, have opportunity to propose suitable accommodation from within its housing stock or, where appropriate, propose an alternative solution, including a management transfer, or Adaptations to an identified dwelling, or a move to suitable temporary accommodation, or other appropriate solution. This may include requesting that the Contractor carry out Adaptations to a Decant Dwelling that is suitable stock to adapt such Decant Dwelling to the needs of the Tenant in the case of a severe level of disability. The cost of such Adaptations incurred by the Contractor shall be paid to the Contractor in accordance with the procedures contained in Part 6 (Other Adjustments) of the Schedule 5 (Payment Mechanism), and the relevant Tenant shall be moved into the modified Decant Dwelling.
- 5.6 Where such alternative solution, as referred to in paragraph 5.5, is not available, the Contractor must undertake any Adaptations to the Decant Dwelling and the

additional costs of undertaking such Adaptations, save for Minor Adaptations which shall be provided by the Contractor at its own cost, shall be paid to the Contractor in accordance with the procedures contained in Part 6 (Other Adjustments) of the Schedule 5 (Payment Mechanism).

## **6 HEALTH AND SAFETY**

- 6.1 If in the opinion of the Contractor, the relevant Dwelling Works proposed 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 shall (subject to the City Council securing access to the Dwelling where the Tenant has refused such access) arrange for the Dwelling to be Decanted in accordance with the Construction Programme and paragraph 8 before the Contractor is obliged to undertake such works.
- 6.2 The Contractor shall inform the City Council where Decant is required pursuant to paragraph 6.1 above and, shall supply all information whenever reasonably requested including records maintained in accordance with paragraph 7 to enable the City Council to take necessary legal action to secure access to the relevant Dwelling if a Tenant refuses such access.
- 6.3 If the City Council informs the Contractor that legal action is to be taken the Contractor will fully cooperate with the City Council in the preparation of the litigation and attendance at court of any of its employees or agents if so required and generally both parties will act in accordance with the Litigation Protocol.
- 6.4 From the time of the notice referred to in paragraph 6.2, until such time that the Contractor is given access and able to Decant the Dwelling in accordance with paragraph 6.1, there shall be a Works or Services Denial Event.

## **7 DECANT RECORDS**

- 7.1 The Contractor shall keep the following documents, copies of which shall be made available to the City Council for inspection on two (2) Working Days' notice:
- a) interview notes of all discussions with the Tenant relating to special arrangements to be made pursuant to this Protocol and/or the proposed Decant;

- b) minutes of the case conference and any other meetings held in accordance with paragraph 5.2.5 above;
- c) any correspondence received from Tenant or other agencies or representatives of Tenant relating to the proposed Decant; and
- d) the documents set out in Appendix 2 to these Protocols.

## **8 DECANTING METHODOLOGY**

8.1 If a household reaches any of the trigger points in paragraph 4 of this Protocol then, four (4) weeks prior to the Decant taking place, the Contractor will write to the Tenant explaining:

- 8.1.1 what it will be doing;
- 8.1.2 the dates;
- 8.1.3 the Contractor's responsibilities; and
- 8.1.4 the Tenant's responsibilities

and giving a contact telephone number for either the RLO or other suitable point of contact.

8.2 Four (4) weeks before the works are due to start, the RLO will meet with the Tenant and explain the arrangements the Contractor has made for the Decant in accordance with this Protocol. The RLO shall explain to the Tenant Temporary Decant Document (appended to this Protocol as Appendix 1) to the Tenant and shall leave the Tenant Temporary Decant Document with the Tenant for completion. The RLO shall collect the Tenant Temporary Decant Document from the Tenant having allowed at least five (5) Working Days for the Tenant to review the implications of the Decant.

8.3 At least ten (10) Working Days prior to the agreed date the Contractor will supply the Tenant with as many boxes (consumable) that they need for their household items and breakables. The Contractor will take responsibility for the storage of any items that the household reasonably cannot move or are not accompanying the Tenant to the Decant Dwelling, if they cannot be ordinarily stored within the Dwelling itself.

- 8.4 At this time the Contractor will confirm in writing to the Tenant that after the move the Dwelling becomes part of the Contractor's construction site and access is not permitted without the Contractor's knowledge and consent (for safety reasons).
- 8.5 On the day of the move (preferably a weekend) the Contractor will provide adequate labour and transport to ensure the move is completed expeditiously and in one (1) day.
- 8.6 The Contractor will invite the Tenant to participate in the positioning of the boxes within the temporary accommodation to ensure unnecessary movement and to check that there are no breakages or damage to the contents.
- 8.7 All electrical equipment and valuable or fragile household contents will be visually checked, a full inventory made and its condition agreed with the Tenant prior to the move.
- 8.8 The Contractor will at its cost arrange:
- 8.8.1 Tenant's removals for both moves but not the packing or unpacking of boxes;
  - 8.8.2 disconnection and reconnection of utilities and internet, cable and satellite facilities – gas, water, electric telephone (where required by the Tenant);
  - 8.8.3 disconnection and reconnection of existing appliances – cooker, washing machine, telephone, dishwasher (if applicable), computer and television unless alternative facilities are available at the Decant Dwelling;
  - 8.8.4 redirection of post if the decant lasts longer than one (1) week;
  - 8.8.5 storage of possessions (pro-rata) if the Decant Dwelling is smaller and possessions cannot be stored safely in the Dwelling whilst works are undertaken, and insurance for such possessions that are stored by the Contractor;
  - 8.8.6 removing and refitting carpets and curtains if necessitated by the works; and
  - 8.8.7 ex-gratia payments in cases of particular hardship although no obligation exists on the Contractor in this respect,



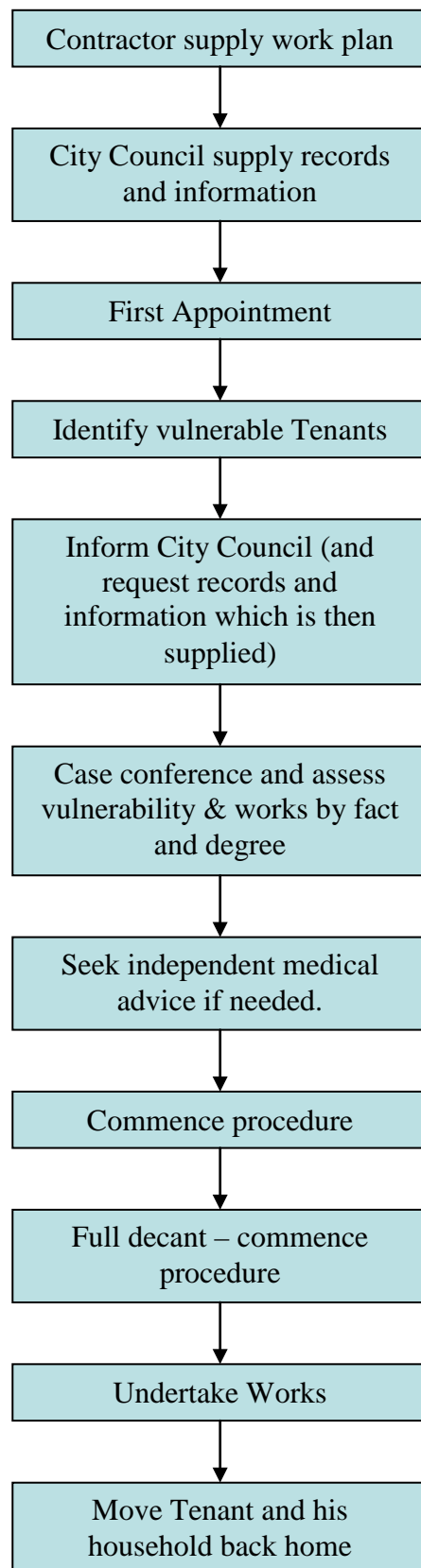
provided that, without prejudice to the Contractor's obligation to maintain the Required Insurances in accordance with the Agreement, the Contractor will not be required to insure the Tenant's possessions that are not stored by the Contractor in accordance with paragraph 8.8.5 of this Decant Protocol.

- 8.9 The same process will be repeated when the Tenants are due to be moved back to their original Dwelling, the only difference being that the notification letters will not be required.
- 8.10 There will be a regular and sufficient dialogue between the Resident Liaison Officer and the Tenant as to when the move back to the original Dwelling is to be expected.
- 8.11 Where contents insurance has been taken out, the Contractor will remind Tenants to inform their insurers prior to any move. Valuable items will be identified and agreed with the Contractor prior to any move.
- 8.12 The Contractor, as an alternative to moving to one of the Decant Dwellings, may (with the relevant Tenant's consent) assist households eligible for Decant to move to other accommodation (family or friends) within the same locality.
- 8.13 In taking responsibility for the Decant of Tenants, any decision made by the Contractor as to who is Decanted will be final.

## **9 DECANT REFUSAL EVENT**

- 9.1 In the event of the Tenant refusing to be Decanted (other than where such refusal is due to the fact that the Decant Dwelling is not in compliance with Annex 13 of the Output Specification) or a Tenant being unable to be Decanted due to his or her vulnerable condition, but subject to paragraph 4.2 above) and the Contractor having complied with the provisions of this Decant Protocol that have a material effect, there will be a Decant Refusal Event which shall be deemed to be an Access Refusal Event pursuant to paragraph 1.1 of Part A of the Access Protocol shall apply and shall be subject to the procedure set out in paragraphs 4 and 5 of Part B (Refurbishment) or paragraphs 4 and 5 of Part C (Planned Maintenance) (as appropriate).
- 9.2 The Decant Refusal Event shall come to an end upon the earlier of either the Tenant agreeing to be Decanted or the Tenant vacating the Dwelling.

## Decant Flowchart



Appendix 1

Tenant Temporary Decant Document

1. **TEMPORARY DECANT TENANCY AGREEMENT**

1.1 In this Agreement:

“Permanent Home” means the dwelling house at

--

“Temporary Home” means the dwelling house at that the Council has made available for the tenant while works are carried out at the Permanent Home.

--

The name of the tenant(s) is/are  
Insurance No

National

1		
2		

This weekly temporary tenancy starts on

.....

All tenants and trustees of any tenants who are under the age of 18 should sign below after reading this Agreement

**You should read the terms of this Agreement before signing it and ask about anything you don't understand. If there is anything you do not understand please ask a Housing Officer. You can get independent advice from a Citizen's Advice Bureau, Solicitor or Law Centre. By signing this agreement you are confirming that you understand it and agree to be bound by it.**

1	
2	

Signed on behalf of the tenant by

..... (insert name) of  
 .....  
 ..... (address) as trustee being a responsible person over the age of 18

Dated .....

Housing Officer .....Neighbourhood Housing Office

Tenancy reference number ..... Dated .....

**“the works”** means the specified works of renovation and refurbishment to be carried out to the Permanent Home.

- 1.2 This Tenancy is a weekly periodic tenancy.
- 1.3 The Council wishes to carry out works to your Permanent Home. You agree to accept the Tenancy of the Temporary Home on the understanding that you will give up occupation of the Temporary Home within two weeks of the Council advising you in writing that the works are completed to your Permanent Home, that your Permanent Home is again available for your occupation and that you must vacate the Temporary Home.
- 1.4 You agree to accept the Tenancy of the Temporary Home on the basis of its current provision of facility and amenity.
- 1.5 You agree to vacate your Permanent Home from the commencement date of this Agreement, remove all furniture and personal belongings from your Permanent Home and agree to allow unrestricted access to your Permanent Home to the Council and it’s Agents for the purposes of carrying out works to your Permanent Home.

- 1.6 You agree that any items of furniture or personal belongings left at your Permanent Home from the commencement date of this Agreement will not be the responsibility of the Council or its Agents and you agree to waive all liability in respect of any items left at your Permanent Home.
- 1.7 You agree not to enter your Permanent Home from the commencement date of this Agreement unless it is agreed in advance with the Council. The Council will only permit you to access your Permanent Home if it is, in the opinion of the Council, safe to do so.
- 1.8 You shall continue to be liable for the rent, as and when it falls due, for your Permanent Home.
- 1.9 You agree to pay for all gas and electricity consumed at or supplied to your Temporary Home and pay all water and sewage charges and Council Tax for your Temporary Home for the duration of your occupation of the Temporary Home.
- 1.10 This Agreement does not entitle you to any statutory security of tenure at the Temporary Home now or upon determination of this Agreement. You agree that the continuation of this Agreement is wholly dependent upon you remaining a Tenant of your Permanent Home.
- 1.11 This Agreement is personal to you as the Tenant and is not capable of being assigned, shared or otherwise disposed of and you must not grant or attempt to grant any assignment over it.
- 1.12 The Council will give you 2 weeks' Notice in writing to vacate the Temporary Home when the works to your Permanent Home have been completed. You agree to vacate the Temporary Home by the date specified in the Council's Notice.
- 1.13 In the event that you fail to vacate the Temporary Home by the date specified in the Council's Notice, you agree that you shall be liable for charges for use and occupation following expiry of the Notice equivalent to the current market rent. This charge will be notified to you in the Council's Notice. This charge must be paid in addition to the rent for the Permanent Home.
- 1.14 In the event that the Tenancy of your Permanent Home is brought to an end before the works are completed, this Tenancy Agreement shall come to an end immediately and you will be required to vacate the Temporary Home on that date. You will be

liable for charges for use and occupation for the Temporary Home equivalent to current market rent from that date until vacant possession is given to the Landlord.

## **2. TENANT'S RESPONSIBILITIES AT THE TEMPORARY HOME**

### **2A ACCESS TO THE TEMPORARY HOME**

**2.1 You must allow the Council access to the Temporary Home at reasonable written notice** (usually 24 hours) for the following purposes:

- a) to carry out repairs or other necessary works or safety checks whether or not the Council has, or has assumed, responsibility for such works, or
- b) to carry out repairs or other necessary works to common areas (such as stairs, lifts, landings, walkways, entrance halls, drying areas, bin stores, paved areas, shared gardens or parking areas) or neighbouring properties owned by the Council.
- c) to carry out annual gas safety checks, or
- d) to inspect the condition of the property, or
- e) to allow prospective tenants to view the Temporary Home; or
- f) for constructing, installing, inspecting, repairing, renewing, maintaining and removing pipes, conduits, wires and cables. Access for this purpose must also be given to statutory undertakers (such as British Gas, Transco and Yorkshire Water).

**In cases of emergency** such as gas, water or sewage leaks or where buildings or electrics are unsafe **you agree** that the Council can enter the Temporary Home without giving you written notice, and whether you are there or not, in order to inspect the Temporary Home and carry out any repairs required to deal with the emergency.

If you do not let us have access you could be putting yourselves and your neighbours at risk. We can take legal action to enter the Temporary Home and you may have to pay the costs, or you may be prosecuted for obstruction.

Never let anyone in without first seeing some official identification. (If you are in doubt contact your Neighbourhood Housing Office during office hours or the emergency number at other times – these numbers are on your rent card).

## 2B USING THE TEMPORARY HOME

- 2.2 If you want someone to stay who was not part of your household when you first moved in (temporarily or permanently) you must get the Council's written permission first. This includes children, relatives, friends and guests. We will not refuse permission unless there is a good reason (such as the person being likely to cause a nuisance or overcrowding).
- 2.3 **You must** use the Temporary Home as your only or principal home. If you don't use the Temporary Home as your only or principal home, we will take action to end your tenancy.
- 2.4 **You must** tell your Neighbourhood Housing Office in writing if you will be away from the Temporary Home for more than 28 days. (This is so we know that you have not abandoned the property).

**You agree** that the Council can enter the premises (whether or not you have been away for 28 days or more) where it reasonably appears that you have abandoned the premises.

**You also agree** that if following inspection of the premises it still appears to the Council that you have abandoned the premises, the Council may change the locks and take any other appropriate steps to protect the premises and may dispose of all personal property found in the premises in accordance with the Torts (Interference with Goods) Act 1977.

**You also agree** that the Council will recharge you with the reasonable cost of changing the locks, making the premises safe and disposing of any personal property found in the premises.

**You also agree** that you will accept any liability to any other person for the loss of any property belonging to such a person and disposed of by the Council following your abandonment.

- 2.5 **You must not** tamper with gas or electricity supplies or with meters.
- 2.6 **You must not** allow the Temporary Home to become overcrowded. If you are unsure about this, ask at your Neighbourhood Housing Office for advice.

- 2.7 **You must not** keep mopeds or motorbikes inside the property or in indoor communal areas (such as stairs, lifts, landings, walkways, entrance halls or indoor drying areas). If you wish to keep a mobility aid such as a scooter or motorised wheelchair you must get written permission first. This will normally be granted.
- 2.8 **You or anyone living with you or visiting the** Temporary Home **must not** run a business from the Temporary Home without getting the Council's written permission first. We will not normally refuse permission unless the business would cause a nuisance or annoyance or might damage the temporary property.
- 2.9 **You agree** that any reasonable costs or liability incurred by the Council as a consequence of your breach or failure to perform any part of this Agreement will be repayable in full upon your receipt of an invoice from the Council. You also agree that the City Council can use any money at any time due from the Council to the tenant towards discharging your liability under this section. Those things for which the Council will recharge include:
- rectifying any work to the premises that you have carried out without the necessary written permission of the City Council;
  - rectifying damage caused by your failure to comply with your repairing duties or failure to maintain your own equipment;
  - changing the locks of and otherwise securing the premises if left abandoned by you;
  - your abuse of the emergency repair service for non-emergency repairs;
  - replacing missing or broken keys.

## **2C COMMUNITY RESPONSIBILITIES**

- 2.10 **You are responsible** for the behaviour of every person (including children) living in or visiting the property. You are responsible in the property, on surrounding land, in communal areas (such as stairs, lifts, landings, walkways, entrance halls, drying areas, bin stores, paved areas, shared gardens or parking areas) and in the locality around the Temporary Home including shopping centres, bus shelters, and other public areas.



2.11 **You** (or anyone living with you or visiting the property) **must not** act in any way which is anti social or which is, or is likely to cause a nuisance to any other person. Nuisance includes behaviour that is harmful, offensive, annoying, disagreeable or interferes with the quiet enjoyment of any other person. Examples of nuisance include:

- noise nuisance such as loud music, loud televisions, shouting or arguing, banging doors, burglar alarms, DIY work;
- dog barking or fouling or allowing your dog to cause a nuisance or annoyance to others in the locality;
- offensive drunkenness;
- selling or possession of drugs, drug abuse and leaving drug related litter and needles;
- use of premises for unlawful activity;
- rubbish dumping;
- excessive vehicle repairs and noise and debris arising from vehicle repairs;
- storing scrap;
- playing ball games in the streets or close to someone else's home
- in a way which causes or is likely to cause a nuisance.

This list is not exhaustive.

2.12 **You** (or anyone else living with you or anyone visiting the Temporary Home) **must not** harass any other person. Examples of harassment include:

- Using racist or homophobic behaviour or language;
- using or threatening to use violence;
- using abusive or insulting words;
- damaging or threatening to damage another person's home or

- possessions;
  - causing damage to another person's property by writing any graffiti;
  - engaging in public disorder;
  - doing anything that interferes with the peace, comfort or convenience of other people.
- 2.13 **You** (or anyone living with you or anyone visiting the Temporary Home) **Must not** make false or malicious complaints about the behaviour of any other person.
- 2.14 **You** (or anyone living with you or anyone visiting the Temporary Home) **must not** use the Temporary Home or any communal area (such as stairs, lifts, landings, walkways, entrance halls, drying areas, bin stores, paved areas, shared gardens or parking areas) for any illegal activity such as selling drugs, burglary or theft from any premises or of any vehicle or property.
- 2.15 **You** (or anyone living with you or anyone visiting the property) **must not** damage, deface or put graffiti on Council property. You will have to pay for any repair or replacement.
- 2.16 **You** (or anyone living with you or anyone visiting the property) **must not** interfere with security or safety equipment in multi-storey flats or communal blocks of flats or maisonettes or sheltered housing complexes. You must not jam, prop or leave shared entrance doors open and strangers should not be let in without identification. You must cooperate with security staff.
- 2.17 **You** (or anyone living with you or anyone visiting the Temporary Home) **must not** break any of the Councils byelaws. You can ask to see the byelaws at a public library.
- 2.18 **You** (or anyone living with you or anyone visiting the Temporary Home) **must not** inflict domestic violence or threaten violence against any other person (living with you or living elsewhere). You (or anyone living with you or visiting the Temporary Home) must not harass or use mental, emotional, racist or sexual abuse to make anyone who lives with you leave the Temporary Home. The Council may still take action for domestic violence even if a case does not go to court.

- 2.19 **You** (or anyone living with your or visiting the Temporary Home) **must not** keep any animal in or near the Temporary Home except if this is permitted by Council Policy on Pets in Council Houses. You must not keep any illegal animals. Even if the Policy allows you to keep an animal you must not allow it to annoy or frighten other people and you must keep your animal in a responsible manner and under control. It must not damage Council property.

Please ask at your Neighbourhood Housing Office for details of the policy.

- 2.20 **You** must ensure that you co-operate with any support provider(s) to enable you to maintain your tenancy.
- 2.21 **You** (or anyone living with you or visiting the property) **must** co-operate with the Council and your neighbours to keep any communal areas (such as stairs, lifts, landings, walkways, entrance halls, drying areas, bin stores, paved areas, shared gardens or parking areas) clean, tidy and clear of obstruction.
- 2.22 **You** (or anyone living with you or visiting the Temporary Home) **must not** drop or throw any items from multi-storey blocks of flats, maisonettes or any other premises.
- 2.23 **You** (or anyone living with you or visiting the Temporary Home) **must not** park a vehicle anywhere on the Temporary Home except on a 'hardstanding' (a driveway or paved area intended for parking).

Caravans or motor homes must not be parked on the garden, driveway, paved area around the Temporary Home or any communal parking areas without the Council's prior agreement in writing. We will not refuse permission unless there is a good reason. You (or anyone living with you or visiting the Temporary Home) must not park anywhere that would obstruct emergency services.

- 2.24 If the Temporary Home has a designated resident's parking space, only you and your legitimate visitors can park there. **You must not** rent or sell the parking space to anyone else.
- 2.25 **You** (or anyone living with you or anyone visiting the Temporary Home) **must not** undertake car repairs in a manner which causes a nuisance to your neighbours or park an illegal or un-roadworthy vehicle on the land around the property or on roads within the locality of the property.

- 2.26 **You** (or anyone living with you or visiting the Temporary Home) **must not** allow the premises to be used as a scrap yard, scrap metal or rubbish store, vehicle store or tyre store.
- 2.27 **You** (or anyone living with you or visiting the Temporary Home) **must not** put up structures such as sheds, garages or pigeon lofts anywhere on the Temporary Home without getting the Council's written permission first. Permission will not be unreasonably withheld.
- 2.28 **You must** make sure your garden is tidy. For example lawns must be cut and hedges trimmed. If the garden is overgrown – and there is no good reason why you cannot do it – the Council can clear it and charge you for the work.
- 2.29 **You** (or anyone living with you or anyone visiting the Temporary Home) **must not** keep or use bottled gas, paraffin, petrol or any other dangerous material in your home or in communal areas (such as stairs, lifts, landings, walkways, entrance halls, drying areas, bin stores, paved areas, shared gardens or parking areas) unless the material is kept safely in suitable storage facilities.
- 2.30 **You must** only put household refuse in containers or chutes provided by the council or in bin bags. You must not allow rubbish to accumulate in the Temporary Home or any garden or communal areas whether or not it is in bin bags. You must not place non recyclable materials in recycling bins.
- 2.31 **You must** not paint the exterior of the Temporary Home or apply any exterior finish such as render without first obtaining the Council's written permission.

## **2D REPAIRS AND IMPROVEMENTS**

- 2.32 **You must** report any disrepair or damage immediately to your Neighbourhood Housing Office. Make sure you get or are sent a written confirmation saying that we have got your request for a repair **and that you keep the confirmation in case you want to make an enquiry later.**

**If you do not get confirmation or you are not happy about the repairs we say we will or will not do you should complain in writing to your Neighbourhood Housing Manager under the Council's complaints procedure.**

**The Council will seek to use independent mediation services to deal with disputes between it and its tenants about repairs, which cannot be resolved by**

**using the Council's complaints procedure. Tenants are strongly encouraged to use this service as it aims to be quicker, less costly and more informal than litigation.**

2.33 If the problem you report comes under the Council's responsibilities we will carry out the repairs. If it does not we will give you the opportunity to do the repair within a reasonable time. If you do not carry out the repair **we can carry it out and charge you for the cost of doing it.**

2.34 **You are responsible** for small repairs like the filling of minor cracks in internal plasterwork including preparatory work for redecoration; lock changes when keys are lost; replacing lost or broken keys; replacing fuses and electric plugs; replacing plugs and chains to sanitary ware; and replacing clothes lines.

**If you are not sure what is your responsibility, ask at your Neighbourhood Housing Office.**

2.35 **You must** allow Council workers or people sent by the Council into the Temporary Home to inspect or carry out repairs. See Section 2.7 for details of when the Council is entitled to access to the property.

2.36 **You must not** make improvements, additions or structural alterations to the property without getting the Council's written permission first. See section 3.3 for details of a tenant's right to make improvements. We will not refuse permission unless there is a good reason.

You must not make any installations which may be unsafe or dangerous to anyone. This might include deep ponds or earth removal.

If you make an improvement, additions or structural alteration to the Temporary Home without getting our written permission first we can tell you to return the Temporary Home to how it was before or to do works to a satisfactory standard or to do works to make the Temporary Home safe. If you do not, the Council will do the work and charge you for it.

**You must not** make any improvements, additions or structural alterations to communal areas (such as stairs, lifts, landings, walkways, entrance halls, drying areas, bin stores, paved areas, shared gardens or parking areas).

- 2.37 The Council does not insure the contents of the Temporary Home. You are advised to arrange adequate householder's comprehensive insurance cover to protect your possessions. **The Council operates a low cost insurance scheme for which you can pay an extra charge with your rent.** If you wish to join this scheme please ask at your Neighbourhood Housing Office.
- 2.38 The Council will not be responsible for any damage to your Temporary Home including decorations or loss from the Temporary Home which happens through fire, flood, theft, burst pipes or similar events, unless it can be shown that this is caused by the Council's negligence, breach of contract or breach of statutory duty. (Note this does not affect the Council's duties to repair set out in Clause 4.3 and you may have a claim if these duties are not kept to).

## **2E LEAVING THE PROPERTY**

- 2.39 **You agree** that the Neighbourhood Housing Office may accept the keys from some other person where it reasonably appears that the other person is returning the keys on your behalf.
- 2.40 **If you leave the Temporary Home and fail to return the keys the Council will change the locks and recharge the cost to you.**
- 2.41 **You must** leave the Temporary Home, the fixtures and fittings and any furnishings we have provided in reasonable condition when you go. **Do not leave any of your belongings or any rubbish behind – the Council will dispose of them in accordance with the Torts (Interference with Goods) Act 1977 and you will be charged for the reasonable cost of disposal.**
- 2.42 **You must not** leave anybody else living in the Temporary Home when you move out.
- 2.43 You must not attempt to pass on your tenancy (called "assignment") to anyone else.
- 2.44 If you are evicted; or abandon the Temporary Home; or still owe charges or money for any other payment due under this Agreement when you move out this may affect how quickly you will be given another Council property in the future.
- 2.45 If you take up another Council tenancy and you still owe money from a previous tenancy you agree that those arrears can be transferred from your previous tenancy onto your current consolidated rent account and you will be expected to clear those

arrears in addition to payments of current rent. This applies whether you move directly from one tenancy to another (transfer) or whether you left the first property some time ago.

### **3. COUNCIL'S RESPONSIBILITIES AT THE TEMPORARY HOME**

#### **3A COMMUNITY RESPONSIBILITIES**

- 3.1 **Everyone has the right to enjoy life in their own way providing they do not upset people living near them. A good neighbour will tolerate and understand the different lifestyles of others. There will be occasions when the Council will decide to take action to evict tenants because of anti-social behaviour. If you are evicted for anti social behaviour or other action is taken against you this may affect your chances of being rehoused by the Council. Please see our Lettings Policy for details.**
- 3.2 **We will** give you, and anyone living with you, help and advice on how to report anti-social behaviour.

#### **3B REPAIRS AND IMPROVEMENTS**

- 3.3 **We will** repair and maintain:
- the structure and exterior of the Temporary Home (including drains, gutters, external pipes and external decoration);
  - the installations in the Temporary Home for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences but not other fixtures, fittings and equipment for making use of the supply of water, gas or electricity);
  - the installations in the Temporary Home for space heating and heating water.
- 3.4 **We will** paint the outside of the Temporary Home at regular intervals. We are not responsible for decorating the inside of the property.
- 3.5 **We will** do repairs in a reasonable time. We will give you or send to you written confirmation of your request for a repair (unless it is an emergency). You should keep this confirmation in case you want to make an enquiry later.
- 3.6 **We will** clear up after a repair.

3.7 **We can** ask a Judge to give us possession of the Temporary Home because work needs to be done to it. This includes cases where you or a person residing in the Temporary Home has caused the condition of the Temporary Home to deteriorate or where we need to carry out major repairs or redevelop or demolish the Temporary Home.

#### **4. SERVICE OF NOTICES**

4.1 Pursuant to Section 48(1) of the Landlord and Tenant Act 1987 the City Council notifies you that its address for service is the Director of Environment and Neighbourhoods, Merrion House, 110 Merrion Centre, Leeds LS2 8BB.

4.2 Pursuant to Section 196 Law of Property Act 1925 any Notice required by law to be served on the Tenant or Occupier shall be validly served if it is left at the address shown on the front of this Agreement or if it is posted to that address and not returned by the Post Office.

#### **5. ADVICE**

If you wish to discuss this Agreement with a representative of the Department of Environment and Neighbourhoods you should contact your Neighbourhood Housing Office or The Housing and Advice Centre.

A translation of the Agreement may be made available.

This can also be made available in large print and braille.

**By keeping to this Agreement, you will help the Department of Environment**

**and Neighbourhoods to meet its vision to create better neighbourhoods and healthier communities.**



## APPENDIX 1E

### Disrepair Actions Protocol

Timetable	Case	City Council Risk and Responsibility	Contractor Risk and Responsibility
<b>At Initial Services Commencement Date (Refurbishment)</b>	<b>All existing cases relating to Disrepair Actions</b>	<p>Continue to specify all works to address Disrepair Actions commenced prior to Initial Services Commencement Date (Refurbishment).</p> <p>City Council is responsible for all litigation up to settlement of all such Disrepair Actions, including legal and compensation costs and counterclaims against the City Council.</p> <p>City Council's sub contractor to continue with works.</p> <p>New instructions to City Council sub contractors to cease on Initial Services Commencement Date (Refurbishment) except in urgent or other priority cases.</p>	None.
<b>At Initial Services Commencement Date</b>	<b>Any other counterclaims against the City</b>	<p>Continue to specify all works to address Disrepair Actions commenced prior to Initial Services</p>	None.

Timetable	Case	City Council Risk and Responsibility	Contractor Risk and Responsibility
<b>(Refurbishment)</b>	<b>Council</b>	<p>Commencement Date (Refurbishment).</p> <p>City Council is responsible for all litigation up to settlement of such Disrepair Actions, including legal and compensation costs and counterclaims against the City Council.</p> <p>City Council's sub-contractor to continue with works.</p> <p>New instructions to City Council's sub-contractor to cease on Initial Services Commencement Date (Refurbishment) except in urgent or other priority cases.</p>	
<b>From Initial Services Commencement Date (Refurbishment)</b>	<b>Existing cases relating to Disrepair Actions and counter claims</b>	<p>The City Council takes responsibility for mitigating Contractor risks including legal costs and checking legal compliance during survey visits..</p> <p>Any "on notice" letters acknowledged shall be referred to the Contractor from the Initial Services Commencement Date (Refurbishment).</p> <p>Joint working on specifications from the Initial</p>	<p>Joint working on specifications.</p> <p>Reporting the works to the City Council.</p> <p>If a counterclaim, liaise with City Council.</p>

Timetable	Case	City Council Risk and Responsibility	Contractor Risk and Responsibility
		<p>Services Commencement Date (Refurbishment) with the City Council leading.</p> <p>Agree final specification for those cases where this is still outstanding with Contractor.</p> <p>City Council is responsible for all litigation up to settlement of Disrepair Actions commenced before Initial Services Commencement Date (Refurbishment), including legal and compensation costs and counterclaims against the City Council.</p> <p>The City Council's sub-contractor to complete all work in progress or outstanding in relation to such Disrepair Actions at the cost of the City Council, as identified by the Contractor and the City Council as outstanding at the Initial Services Commencement Date (Refurbishment), within a reasonable period following the Initial Services Commencement Date (Refurbishment).</p> <p>No new works undertaken by City Council's sub-</p>	

Timetable	Case	City Council Risk and Responsibility	Contractor Risk and Responsibility
		<p>contractor to address Disrepair Actions.</p> <p>Any guarantees relating to works carried out by the City Council's sub-contractor to be assigned, where possible.</p> <p>Where the City Council cannot assign the benefit of any guarantee, at the Contractor's request the City Council shall invoke the provisions of the guarantee.</p>	
<p><b>Post Initial Services Commencement Date (Refurbishment)</b></p>	<p><b>New cases pre Disrepair Actions Cut Off Date</b></p>	<p>Agree the level of specification for any works to address Disrepair Actions, depending on where Dwelling is in the refurbishment programme, with the Contractor.</p> <p>Agree final specification with the Contractor.</p> <p>City Council is responsible for all litigation up to settlement of Disrepair Actions, including legal and compensation costs and counterclaims against the City Council.</p>	<p>Deductions from the Unitary Charge shall apply from the date following the relevant Rectification Period (as set out in Schedule 5 (Payment Mechanism)) provided that such defect is due to failure by the Contractor to maintain Dwellings at the Interim Availability Standards.</p> <p>All new works to address Disrepair Actions to be undertaken by the Contractor.</p> <p>Liaise with the City Council in relation to any letters before action relating to Disrepair Actions.</p>

Timetable	Case	City Council Risk and Responsibility	Contractor Risk and Responsibility
		<p>Liaise with the Contractor.</p> <p>Refer "on notice" letters to the Contractor.</p> <p>Joint working with the Contractor on any counterclaims until settlement.</p>	<p>Negotiate the specification of works with the City Council.</p> <p>All risks and responsibility relating to all new works undertaken by the Contractor and their costs.</p> <p>Refer any "on notice" letters to the City Council.</p> <p>Where the volume of Works required to be undertaken by the Contractor due to Disrepair Actions exceeds the 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 City Council under the Liaison Procedure or otherwise. The Contractor and the City Council shall consider the relevant Disrepair Actions and the City Council 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</p>

Timetable	Case	City Council Risk and Responsibility	Contractor Risk and Responsibility
			<p>determined under the Dispute Resolution Procedure.</p> <p>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 City Council arising from such Disrepair Actions (in accordance with clause 28.4.4) of this Agreement.</p> <p>At any time following the Initial Services Commencement Date (Refurbishment) and prior to the Disrepair Action Cut Off Date, the City Council, and the Contractor shall consider whether as part of the 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 Contractor's obligations to achieve the Planned Full Services Commencement Date (Refurbishment) for each Dwelling.</p>

Timetable	Case	City Council Risk and Responsibility	Contractor Risk and Responsibility
			<p>The Contractor shall agree with the City Council (such agreement not to be unreasonably withheld) a standard brief which shall 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>
<p><b>Post Initial Services Commencement Date (Refurbishment)</b></p>	<p><b>New counterclaims pre-Disrepair Action Cut Off Date</b></p>	<p>City Council is responsible for settling contested arrears cases that form part of a counterclaim to a Disrepair Action.</p>	<p>Contractor to specify works to address Disrepair Actions to mitigate City Council losses and costs as above.</p> <p>All risks and responsibility for all works to address Disrepair Actions undertaken by the Contractor and their costs.</p> <p>Instruct Contractor's solicitors.</p> <p>Where the volume of Works required to be undertaken by the Contractor due to Disrepair Actions exceeds the Contractor's capacity, to undertake such Works (acting in accordance with Good Industry Practice, the Works Delivery Plan</p>

Timetable	Case	City Council Risk and Responsibility	Contractor Risk and Responsibility
			<p>and in a reasonable timeframe), the Contractor shall raise such volume of Works with the City Council under the Liaison Procedure or otherwise. The Contractor and the City Council shall consider the relevant Disrepair Actions and the City Council 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> <p>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 City Council arising from such Disrepair Actions (in accordance with clause 28.4.4 of this Agreement).</p> <p>The Contractor shall agree with the City Council (such agreement not to be unreasonably withheld) a standard brief which shall be used by the</p>



Timetable	Case	City Council Risk and Responsibility	Contractor Risk and Responsibility
			Contractor's or Sub-Contractor's employees when discussing with Tenants and Leaseholder possible Works to address potential or actual Disrepair Actions.
<b>Post Initial Services Commencement Date (Refurbishment)</b>	<b>New cases post-Disrepair Actions Cut Off Date</b>	None.	All.
<b>Post Initial Services Commencement Date (Refurbishment)</b>	<b>New counterclaims post Disrepair Actions Cut Off Date</b>	City Council is responsible for conduct of counterclaims to Disrepair Actions for which it is responsible pursuant to the Litigation Protocol.	All, save where the City Council is responsible for conduct of counterclaims to Disrepair Actions pursuant to the Litigation Protocol.

## **APPENDIX 1F**

### **Adaptations Protocol**

#### **1. APPLICATION OF ADAPTATIONS PROTOCOL**

- 1.1 The Contractor shall throughout the Contract Period carry out Adaptations in accordance with the procedure set out in this Protocol and in accordance with Annex 14 of the Output Specification.
- 1.2 To the extent that there are Leasehold Dwellings where Major Adaptations are required or the Leaseholder wishes to retain Existing Adaptations, this Protocol shall also apply in respect of such Leasehold Dwellings and references to Tenants shall include reference to Leaseholders (and for the avoidance of doubt references to Dwellings include reference to Leasehold Dwellings). For the avoidance of doubt, provisions in respect of Minor Adaptations shall not apply to Leaseholders or Leasehold Dwellings.

#### **2. MINOR ADAPTATIONS**

- 2.1 The Contractor shall install, at the Contractor's own cost, any Minor Adaptations which:
- (a) are notified to the Contractor by the Council or reasonably requested by the Tenant; or
  - (b) the Contractor identifies as being required.
- 2.2 Such Minor Adaptations shall be carried out by the Contractor in accordance with the Service Performance Standards as set out in Annex 6 of the Output Specification.
- 2.3 In complying with this paragraph 2.2, the provisions of Part D (Responsive Repairs Protocol) of the Access Protocol shall apply.

#### **3. NOTIFICATION OF NEED FOR MAJOR ADAPTATIONS**

- 3.1 The Contractor shall inform the City Council of any requests received by the Contractor from Tenants for Major Adaptations as soon as reasonably practicable and give the City Council such information as is reasonably requested by the City Council in order for the City Council to commence a formal assessment of need for such Major Adaptations. On such notification, the provisions of paragraph 5 shall apply.

#### **4. LIAISON PROCEDURE FOR ADAPTATIONS DURING THE REFURBISHMENT WORKS PERIOD**

4.1 The Contractor shall, at least four (4) months prior to commencement of the Refurbishment Works for each group of Dwellings, notify the City Council of the Contractor's proposed programme for such group of Dwellings.

4.2 As soon as reasonably practicable but not more than one (1) month after receipt of the programme referred to in paragraph 4.1 above the City Council will write to the Contractor identifying any relevant Dwellings within the relevant group where Major Adaptations are likely to be required, the nature of such Adaptations (to the extent known) and shall inform the Contractor of when the City Council expects to have completed the formal assessment of the need for such Adaptation in which case the provisions of paragraph 5 shall apply.

4.3 Notwithstanding paragraph 4.2 above, the Contractor shall inform the City Council of any potential need for Major Adaptations identified as a result of discussions with the Tenant at the First Appointment within five (5) Working Days of such appointment or, if identified otherwise, as soon as reasonably practicable, including details of what Major Adaptations the Contractor reasonably considers to be necessary and any material effect upon the Contractor's programme of such Major Adaptations. On such notification the provisions of paragraph 5 shall apply.

4.4 The Contractor shall use all reasonable endeavours to:

4.4.1 ensure that any Major Adaptations referred to in this paragraph 4 are carried out during the Refurbishment Works Period; and

4.4.2 procure that any Major Adaptation referred to in this paragraph 4 are carried out by the Building Contractor as part of such Refurbishment Works;

unless it can reasonably demonstrate that to do so would adversely affect the Contractor's proposed programme.

#### **5. MAJOR ADAPTATIONS**

5.1 Where the potential need for a Major Adaptation has been identified pursuant to paragraphs 3.1, 4.2.1 or 4.3 or otherwise, the City Council shall consider the request for the Major Adaptation and undertake a formal assessment (where required) of such need in respect of the relevant Dwelling. The City Council shall notify the

Contractor in writing, pursuant to the provisions of the Change Protocol, where it has determined that a Major Adaptation is required and the provisions of such protocol shall apply.

- 5.2 Where such notice referred to in paragraph 5.1 above identifies (in the City Council's absolute discretion) that a Major Adaptation is required, the City Council shall request a Change in accordance with the Change Protocol for the Contractor to install such Major Adaptation and the provisions of the Change Protocol shall apply and the parties agree that the Unitary Charge shall be adjusted in accordance with paragraph 5.2 of Part 2 of the Change Protocol to take account of the whole of life costs of such a Major Adaptation.
- 5.3 Notwithstanding any provision of the Change Protocol, the City Council agrees that if the City Council wishes to carry out a Major Adaptation itself or through a contractor engaged by the City Council, paragraph 9 applies.

## **6. EXISTING ADAPTATIONS**

- 6.1 Where there is an Existing Adaptation at a Dwelling, then the Contractor shall not remove the Existing Adaptation, and shall adapt any Dwelling Works in relation to the affected Dwelling accordingly, unless:
- (a) the Contractor reasonably believes that there are significant health and safety issues which require the Existing Adaptation to be removed; or
  - (b) the City Council instructs the Contractor to remove the Existing Adaptation.

in which case the provisions of paragraphs 1 to 5 of this Protocol (as appropriate) shall apply.

- 6.2 To the extent that:
- (a) the Contractor considers that the Existing Adaptation may not be adequate to accommodate the Tenant's needs; or
  - (b) the Tenant requests additional or different Adaptations to the Existing Adaptation, or
  - (c) an Existing Adaptation is beyond repair and needs to be replaced in full;

then the Contractor shall notify the City Council as soon as reasonably practicable. The City Council will as soon as reasonably practicable confirm whether the Existing Adaptation should be removed and/or whether an additional or replacement Adaptation is required, and any such addition or replacement shall be dealt in accordance with this Protocol.

- 6.3 To the extent that an Existing Adaptation is retained in accordance with paragraph 6.2, any reasonable increase or decrease in the Contractor's costs incurred by the Contractor as a direct result of retention of the Existing Adaptation shall be paid (or retained) by the City Council in accordance with Part 6 (Other Adjustments) of Schedule 5 (Payment Mechanism), and such costs, where relevant, shall be calculated by reference to equivalent costs set out in the Catalogue;

## **7. COMPLETION OF ADAPTATION**

- 7.1 The Contractor shall inform the City Council of all Adaptations completed in the Monthly Monitoring Report.
- 7.2 On completion of any Adaptation by the Contractor the City Council may inspect the Adaptation to ensure that the Adaptation has been completed:
- (a) in the case of Major Adaptations, and if such Major Adaptation is referred to in the Change Request, then the standard for such Major Adaptation, as set out in Annex 6 of the Output Specification;
  - (b) in the case of Major Adaptations, and if such Major Adaptation is not referred to in the Change Request, then the standard for such Major Adaptation, shall be that required by Good Industry Practice; or
  - (c) in the case of a Minor Adaptation, in accordance with Good Industry Practice.

## **8. RECORDS**

- 8.1 Copies of written interview notes and any correspondence or other communications received from Tenants or representatives of Tenants relating to the Adaptation or Existing Adaptations (including for the avoidance of doubt the removal of Existing Adaptations) will be made available to the City Council for inspection on two (2) Working Days' notice.

8.2 The Contractor shall keep an accurate and up to date record of all Adaptations or work relating to Existing Adaptations which has been carried out by the Contractor and shall submit details in the Monthly Report to the City Council as referred to in paragraph 7.1 above.

## **9. CITY COUNCIL CARRYING OUT MAJOR ADAPTATION**

9.1 If the City Council wishes to carry out a Major Adaptation itself, the City Council shall notify the Contractor of such intention to carry out the Major Adaptation, with notice of the details of such Major Adaptation, and the Dwelling where the City Council wishes to carry out such Major Adaptation.

9.2 If the City Council notifies the Contractor in accordance with paragraph 9.1 above, the City Council shall not commence the carrying out of such Major Adaptation at that Dwelling, or permit the carrying out of such Major Adaptation at that Dwelling until the City Council and the Contractor have discussed and agreed:

- a) the impact of the City Council carrying out such Major Adaptation will have on the Contractor's Dwelling Works;
- b) any warranties that the Contractor might reasonably require the from the City Council, or any contractor engaged by the City Council, in relation to such Major Adaptation; and
- c) any relief that the Contractor will need to address the impact due to the City Council carrying out such Major Adaptation, including, but not limited to:
  - (i) any additional cost that will be incurred by the Contractor; and
  - (ii) any delay that will be suffered by the Contractor.

9.3 If the City Council and the Contractor agree the matters referred to in paragraph 9.2 above, the City Council shall:

- a) provide such warranties; and
- b) grant the Contractor such relief,

as agreed between the City Council and the Contractor.

9.4 The City Council shall carry out, or procure the carrying out, of any Major Adaptation that the City Council is entitled to carry out, or procure the carrying out, in accordance with this paragraph 9, in accordance with Good Industry Practice.

## APPENDIX 1G

### Tenant and Third Party Damage Protocol

1. This Protocol defines the circumstances in which the Contractor may pass through costs to the City Council 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. For the avoidance of doubt, the Contractor shall take all reasonable steps to mitigate the consequences of any Tenant Damage or Third Party Damage including to mitigate the level of any Qualifying Costs.
2. The following costs are not Qualifying Costs:
  - 2.1 costs in respect of any damage to Dwellings that is not Tenant Damage or Third Party Damage;
  - 2.2 costs in respect of any damage caused by the Contractor or any Contractor Related Party;
  - 2.3 any costs in respect of any damage to Dwellings which was identified in the Stock Conditions Surveys;
  - 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;
  - 2.5 any costs in respect of which insurance proceeds are recovered (or which ought to be recoverable) under the Required Insurances; and
  - 2.6 any costs already paid for through the Unitary Charge, including (without limitation) the cost of repair or replacement of any items which would properly have been replaced by the Contractor as part of any Dwelling Works and any staff costs in respect of employees of the Contractor or any Sub-Contractor employed in respect of the Project where such costs would have been incurred notwithstanding the event of Tenant Damage or Third Party Damage.



3. The City Council will be responsible for an amount equal to 100% of the Qualifying Costs incurred by the Contractor in respect of Third Party Damage in any Contract Year.
4. The City Council will be responsible for the Qualifying Costs incurred by the Contractor in respect of Tenant Damage in any Contract Year.
5. The Contractor shall as soon as reasonably practicable notify the City Council of full details of each event of Tenant Damage or Third Party Damage, including:
  - 5.1 full details of the damage concerned;
  - 5.2 evidence of the costs of remedying the relevant damage, including details of the steps taken by the Contractor to mitigate such costs. Such costs shall be calculated by reference to the costs of such remediation work as set out in the Catalogue where applicable;
  - 5.3 any evidence of the party causing such damage;
  - 5.4 to the extent that the Contractor wishes to claim the cost of repair or rectification of such Tenant Damage or Third Party Damage as a Qualifying Cost, evidence that such damage (or cost in respect of such damage) is not excluded from being a Qualifying Cost pursuant to paragraph 1 above;
  - 5.5 any other information reasonably required by the City Council, including, but not limited, for the purposes of the Litigation Protocol or any action against any party causing such damage; and
  - 5.6 any information required pursuant to the Output Specification,
6. The City Council shall pay to the Contractor any part of the Qualifying Costs for which it is responsible pursuant to paragraphs 3 or 4 of this Protocol in accordance with Part 6 (Other Adjustment of this Agreement, and for each Payment Period shall be set out by the Contractor in the report issued pursuant to clause 33.2 (Report and Invoice). Where the City Council disagrees that any cost is a Qualifying Cost such dispute shall be determined in accordance with clauses 33.6 to 33.9 (Payment Provisions) of this Agreement.

7. The Contractor shall be entitled to an Excusing Event in relation to a Service Performance Failure or Unavailability arising from Tenant Damage or Third Party Damage where:
  - 7.1 such damage is notified to the City Council in accordance with paragraph 5; and
  - 7.2 in rectifying such Tenant Damage or Third Party Damage the Contractor complies with the time periods for rectification set out in Annex 10 of the Output Specification,provided that an Excusing Event will not arise where failure to complete the rectification would result in the Dwelling falling below the relevant Availability Standards (Initial) or a health and safety risk would otherwise occur.
8. The Contractor will secure empty Dwellings from Third Party Damage in accordance with Annex 17 of the Output Specification and taking all reasonable steps in accordance with Good Industry Practice and relevant prevailing circumstances. More than five per cent (5%) of 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 Payment Period will not be Qualifying Costs.
9. The Contractor shall demonstrate that Tenant Damage and Third Party Damage to property elements is not attributable to fair wear and tear with reference to the following considerations:
  - 9.1 comparison with immediately adjacent or similar elements;
  - 9.2 estate inspection records;
  - 9.3 the Stock Condition Surveys and any ongoing surveys and monitoring in accordance with the Output Specification;
10. The Contractor must, in the Monthly Report, report to the City Council the quantum of Tenant Damage and Third Party Damage costs (whether or not Qualifying Costs) incurred in each Payment Period.
11. If either party reasonably believes that the costs reported pursuant to paragraph 10 are excessively high during any Payment Period, the Contractor shall take all reasonable steps to mitigate such costs and will co-operate with the City Council to

produce a review plan that will investigate, identify and, as far as possible mitigate, the causes of these incidences. The Contractor shall use reasonable endeavours to implement this plan to the satisfaction of the City Council (acting reasonably).

12. Where the City Council seeks to recover from Tenants, Leaseholders, former Tenants, former Leaseholders or anyone else in respect of Tenant Damage or Third Party Damage, the Contractor shall provide the City Council with all reasonable assistance in demonstrating the cost of such damage in accordance with the Litigation Protocol.

## APPENDIX 1H

### Litigation Protocol

#### 1. APPLICATION OF THIS PROTOCOL

1.1. This Protocol applies to:

1.1.1 any litigation being prosecuted or defended before any court or threatened before any court or any alternative dispute resolution (including without limitation that litigation referred to in the table at Annex 1 (the “**Litigation Table**”);

1.1.2 any notice procedures under the Party Wall etc. Act 1996 and the resolution of disputes which flow from the service of such notices; and

1.1.3 any Disrepair Action;

which is in respect of:

(a) the Project; or

(b) any Tenant, Leaseholder or Property and which is in connection with the Works or Services;

(which for the purposes of this Protocol shall be referred to as “**Litigation**”).

1.2 **Application of this Protocol** This Protocol does not apply to:

1.2.1 the Dispute Resolution Procedure or any circumstances in respect of which the Dispute Resolution Procedure is stated to apply pursuant to the terms of this Agreement;

1.2.2 any litigation being prosecuted or defended before any court or threatened before any court or any alternative dispute resolution which is between the parties of any of the Sub-Contracts or Financing Agreements.

In the event of an inconsistency between the application of the civil procedure rules and of this Protocol, the civil procedure rules shall take precedence.

## **2. LITIGATION TABLE**

- 2.1 The Litigation Table sets out in respect of each type of Litigation listed therein:
  - 2.1.1 which party shall take conduct of such Litigation (the “Conduct Party”);
  - 2.1.2 the period for which the Conduct Party shall be responsible for conducting such Litigation;
  - 2.1.3 the co-operation requirements with which both parties shall comply; and
  - 2.1.4 (subject to paragraph 8) which party shall be responsible for the Litigation Costs (as the same are defined in paragraph 8.1 of this Protocol).

## **3. NOT USED**

## **4. NOTIFICATION**

- 4.1 Without prejudice to clauses 5.2 (Contractor Undertakings), 58 (Indemnities, Guarantees and Contractual Claims) and 59 (Insurance) of the Agreement, either party shall notify the other party in writing within five (5) Working Days of becoming aware of any Litigation (which for the avoidance of doubt includes threatened Litigation) where the other party is the Conduct Party or where such Litigation would materially affect the other party (in the opinion of the notifying party, acting reasonably).
- 4.2 Where a party receives any correspondence addressed to it regarding any Litigation (which for the avoidance of doubt includes threatened Litigation) but is not the Conduct Party, it shall acknowledge receipt of such correspondence to the sender but shall not make any statement accepting or implying liability or do anything else which may prejudice the handling of such Litigation by the Conduct Party.
- 4.3 Where the Council is the Conduct Party:
  - 4.3.1 the Contractor shall provide to the City Council any information that is reasonably required by the City Council to fully assess whether Litigation can or should be brought as soon as reasonably practicable following a request for the same.

4.3.2 the Contractor shall notify the City Council promptly following becoming aware that:

- a) Litigation is required either for reasons of health and safety or for any other considerations which make litigation necessary (in the Contractor's opinion, acting reasonably); and
- b) it is a matter where the City Council has the legal right to commence Litigation and the Contractor cannot do so.

4.4 Subject to paragraph 4.5 below, where the Contractor is the Conduct Party, the Contractor shall notify the City Council no later than ten (10) Working Days prior to the commencement of any Litigation (or where this is not possible, as soon as practicable after such Litigation has commenced).

#### **4.5 Contractor Claims against Tenant/Leaseholder**

Notwithstanding paragraph 4.4. where the Contractor wishes to commence civil or criminal proceedings against a Tenant or Leaseholder if shall notify the City Council of the same as soon as the Contractor considers that it has grounds to pursue such proceedings and that such action is reasonable in the circumstances and the Contractor shall reasonably consider any representations made by the City Council received within ten (10) Working Days of the notification and prior to commencing proceedings.

#### **4.6 Third Party Claims**

Where either party is aware that third party Litigation which may affect the other party is threatened or pending then that party should notify the other party as soon as reasonably practicable and in any case within three(3) Working Days and where Litigation has already commenced the other party should be notified as soon as is reasonably practicable.

### **5. LIAISON**

#### **5.1 Records**

The Conduct Party is entitled to request and receive within the period reasonably stipulated by it all relevant records in relation to the Litigation contemplated or in progress kept or in the power or control of the other party (the "**Other Party**")

(whether records are kept in accordance with the Agreement, the Protocols or otherwise) unless the Other Party is constrained from supplying the same by its compliance with its duties of confidentiality owed to any third party, including any duties arising under the Data Protection Act 1998.

## **5.2 Case preparation/conduct**

- 5.2.1 The Conduct Party has the right to prepare all correspondence and court documents, including pleadings and statements but shall keep the Other Party informed of progress on a regular basis and otherwise upon reasonable request.
- 5.2.2 The parties shall work closely (and wherever possible jointly) in respect of all issues of causation or liability. Where the Conduct Party requests assistance in any respect from the Other Party (including without limitation the assistance referred to in paragraph 5.2.4 and assistance required for the conduct of the Litigation) the Other Party shall give such reasonable assistance and co-operation on the date reasonably stipulated or otherwise as soon as reasonable practicable provided it is within the Other Party's power or control to do so.
- 5.2.3 The Contractor acknowledges that the City Council wishes to maintain a continuity in its approach to conducting and settling Disrepair Actions across the city of Leeds. Where the Contractor is the Conduct Party, in order to assist the City Council in maintaining such consistency, the Contractor shall:
- a) act reasonably in connection with any Disrepair Action and in accordance with the civil procedure rules;
  - b) act in accordance with any reasonable instructions or guidance of the City Council in respect of the conduct Disrepair Actions;
  - c) not admit that disrepair exists (amounting to a breach of tenancy conditions or section 11 of the Landlord and Tenant Act 1985) unless such disrepair exists; or
  - d) not admit liability or settle any Disrepair Action without the consent of the City Council (not to be unreasonably withheld or delayed);

5.2.4 The Other Party shall provide all reasonable assistance and / or co-operation to the Conduct Party, including without limitation:

- a) in respect of preparation of documents, including preparation of pleadings, witness statements, site surveys, reports;
- b) in respect of locating, interviewing witnesses and securing their attendance at court, provided that such obligation shall only apply in respect of witnesses are employees or agents or otherwise under the power or control of the Other Party; and
- c) as referred to in the fourth column of the Litigation Table.

## **6. OTHER CONSEQUENCES OF CONDUCT**

6.1 Subject to paragraph 5.2.3, the Conduct Party is entitled to full conduct of the action (subject to compliance with the terms of this Agreement) and will make all decisions as to whether to pursue and continue the action, tactics within the Litigation and as to settlement and as to when to pursue or defend an appeal arising out of the subject Litigation.

6.2 The Conduct Party shall keep the Other Party informed of the progress of any Litigation.

6.3 To the extent that any Litigation falls within the indemnity clause(s) of this Agreement the Conduct Party shall not settle such claim without the prior consent of the indemnifying party (such consent not to be unreasonably withheld or delayed).

## **7. CONDUCT OF LITIGATION NOT TO BE A COMPENSATION EVENT**

7.1 Subject to paragraph 10A.5, the City Council's conduct of any Litigation and the consequences of any Litigation (including without limitation any direct or indirect consequential loss) shall not be, or give rise to, a Compensation Event.

## **8. COST SHARE**

8.1 For the purposes of this Protocol, "Litigation Costs" shall mean any or all of :



- a) the reasonable costs of commencing, defending, continuing or concluding Litigation save as provided for in paragraphs 8.1(b) to 8.1(d) inclusive (the **“Conduct Party’s costs”**);
- b) the Other Party’s reasonable costs assisting the Conduct Party in respect of Litigation pursuant to paragraph 5.2.4 or otherwise (the **“Other Party’s costs of assistance”**);
- c) counsel’s fees and fees in respect of expert evidence considered necessary by the Conduct Party for the conduct of the Litigation (the **“expert’s costs”**);  
and
- d) any costs of a third party which the Conduct Party is ordered or agrees to pay, or any damages or compensation awarded against the Conduct Party or fines payable as a result of the Litigation (the **“third party’s costs”**).

## **8.2 City Council Proceedings to assist the Contractor**

Where Litigation is conducted by the City Council to assist the Contractor in furtherance of the Contractor’s obligations under the Agreement, the Contractor shall pay all Litigation Costs of the City Council incurred in such proceedings (to be taxed on an indemnity basis if not agreed) including for the avoidance of doubt the reasonable internal costs of the City Council of conducting such Litigation.

## **8.3 Proceedings conducted by Indemnifying Party**

The costs of Litigation in which a party is involved pursuant to clause 58 (Indemnities, Guarantees and Contractual Claims) of the Agreement or any other contractual indemnity set out in the Agreement shall be borne as provided in the Agreement to the extent covered by the indemnity and unless and to the extent that the indemnifying party can prove that the indemnified has not reasonably cooperated during the Litigation and this has resulted in material additional costs.

## **8.4 Other Litigation Costs**

Subject to paragraphs 8.2 and 8.3 above, each limb of the Litigation Costs shall be borne for each type of Litigation as set out in the final four columns of the Litigation Table.

**9. CITY COUNCIL RIGHT TO HAVE CONDUCT OF DISREPAIR ACTION COUNTERCLAIM**

Where the City Council has commenced actions (for example a possession action for rent arrears) and is met by a counterclaim for disrepair (which would usually be conducted by the Contractor in accordance with the terms of this Agreement) the City Council at its sole discretion may exercise a right to take over conduct of the counterclaim, such right to be exercised within fifteen (15) Working Days the service of such a counterclaim. The costs of defending any such counterclaim and settlement of such actions shall be apportioned between the parties in accordance with the Litigation Table and the Disrepair Actions Protocol.

**10. SETTLEMENT OF LITIGATION WHERE BOTH PARTIES ARE DEFENDANTS OR WHERE WITHIN PARAGRAPH 9 ABOVE**

If there is a dispute regarding the proportions which each party should bear of the settlement of the Litigation or the costs associated the parties will on a provisional basis divide the costs and expenses equally so as to allow the case to be settled. Any dispute shall thereafter be referred to Dispute Resolution Procedure.

**10A DISREPAIR ACTIONS DURING CONTRACT PERIOD**

**10A.1** The Parties may agree that the City Council's existing litigation and expert surveyor internal resources will continue to conduct Disrepair Action litigation (other than such litigation which is a counterclaim to an litigation commenced by the City Council, in respect of which paragraph 9 applies) where such action is commenced post the Disrepair Actions Cut-Off Date.

**10A.2** Where the City Council is to conduct Disrepair Action litigation as referred to in paragraph 10A.1, the Parties:

- i) shall reasonably agree the terms upon which the City Council shall carry out such litigation which shall be based upon a "Disrepair Action Conduct Protocol". Such Disrepair Action Conduct Protocol shall be a final form of the draft protocol contained in Annex 2 and the Parties shall act reasonably to agree a final form of such draft protocol.
- ii) acknowledge that, subject to clause 55 (Freedom of Information and Confidentiality) of this Agreement, the City Council does not owe the

Contractor a duty of confidentiality in respect of any information that the Contractor provides to the City Council in respect of the Disrepair Action.

**10A.3** For the avoidance of doubt:

- i) Subject to paragraphs 10A.1, 10A.2 and 10A.3 (ii) and (iv) below, the City Council shall conduct such Disrepair Actions;
- ii) the City Council shall always legally be the defendant in a Disrepair Action, and thereby the issuer of a counterclaim;
- iii) the City Council shall not conduct such Disrepair Actions where:
  - a) there is a conflict of interest;
  - b) where it is not lawfully able to take conduct; or
  - c) where the City Council advises the Contractor that it does not have the capacity to conduct a Disrepair Action;
- iv) notwithstanding that the City Council will be named defendant or the issuer of a counterclaim, nothing in this Litigation Protocol shall permit the Contractor to issue instructions to the City Council to take conduct of the Disrepair Action Disrepair Actions where such instructions are not reasonably in the best interests of the City Council;
- v) where the City Council reasonably considers that it is not in the City Council's best interests to take conduct of a Disrepair Action, then the Contractor shall have conduct of the Disrepair Action.
- vi) If both:
  - a) the City Council reasonably considers that it is not in the City Council's best interests to take conduct of a Disrepair Action; and
  - b) the Contractor cannot take conduct of the Disrepair Action, because it reasonably considers that is not in the Contractor's best interests to do so, or the Contractor does not have capacity to take conduct of the Disrepair Action;

then, both parties will act jointly and reasonably to identify the appropriate third party to take conduct of such Disrepair Action

**10A.4** The Contractor may take back conduct of any Disrepair Action at any time, and the terms of this Protocol (including paragraph 5.2.3) shall continue to apply to such Disrepair Action.

**10A.5** The Parties agree that any acts or omissions or failures by the City Council in the conduct of any Disrepair Action under paragraph 10.1 shall not amount to a breach of the terms of this Agreement or a Compensation Event, save:

- i) to the extent that costs or damages of a third party claimant are increased by reason of a failure by the City Council to comply with a time limit under the Civil Procedure Rules (and compliance with such time limit was reasonably within the control of the City Council and has not been delayed due to acts or omissions of the Contractor); or
- ii) where the City Council has settled such Disrepair Claim without authority of the Contractor under , to the extent that the Contractor can reasonably demonstrate that the terms of settlement were inappropriate and excessive; or
- iii) where any costs to be borne by the Contractor pursuant to Annexes 1 and 2 are increased by reason of the failure of the City Council to progress such Disrepair Claims expeditiously

and provided that any liability of the City Council in this regard shall not exceed the amount of the costs charged by the City Council to the Contractor in respect of the conduct of such Disrepair Action.

**10A.6** Notwithstanding the provisions of this paragraph 10A, the Contractor agrees and acknowledges that it shall carry out repair works in respect of a Disrepair Claim which are agreed with a claimant or ordered by court.

## **11. CITY COUNCIL STEP-IN**

Where Litigation is brought by the Contractor as agent for the City Council and the Contractor requires the City Council's assistance the City Council shall have a right, exercisable at its sole discretion to step-in to bring the Litigation by substitution of itself as a party for the Contractor.

## **12. INDEMNITY BY CONTRACTOR**

The Contractor shall indemnify and keep indemnified the City Council against all losses, claims, damages, liabilities, costs and expenses (including legal costs) incurred by it in respect of any Litigation conducted by the City Council to assist the Contractor following step-in in accordance with paragraph 11.

## Annex 1 – Litigation Table

Type of Litigation	Conduct Party	Period of responsibility for conduct of Litigation	Cooperation Requirements of parties in addition to this Protocol	Litigation Costs (a) – Conduct Party’s costs	Litigation Costs (b) – Other Party’s costs of assistance	Litigation Costs (c) – expert’s costs	Litigation Costs (d) – third party’s costs
Possession Proceedings / Injunction against Tenants (for access)	City Council (as claimant on behalf of Contractor)	Contract Period	Access Protocol	Contractor	Contractor	Contractor	Contractor
Possession – Ground 10 Housing Act 1985	City Council (as claimant on behalf of Contractor)	Contract Period	Access Protocol and Decant Protocol	City Council	Contractor	City Council	City Council
Disrepair Actions (all issued cases / claims made including counterclaims of disrepair)	City Council (as defendant)	Up to the Disrepair Actions Cut-Off Date	Disrepair Actions Protocol	City Council	Contractor	City Council	City Council
Disrepair Actions (all issued cases / claims made)	Contractor (on behalf of the City Council as	Disrepair Actions Cut-Off Date to earlier of the Expiry Date and the	Disrepair Actions Protocol	Contractor	Contractor	Contractor	Contractor

Type of Litigation	Conduct Party	Period of responsibility for conduct of Litigation	Cooperation Requirements of parties in addition to this Protocol	Litigation Costs (a) – Conduct Party’s costs	Litigation Costs (b) – Other Party’s costs of assistance	Litigation Costs (c) – expert’s costs	Litigation Costs (d) – third party’s costs
	defendant)	Termination Date					
Disrepair Actions (all issued cases / claims made including counterclaims of disrepair)	City Council (as defendant)	From earlier of the Expiry Date and the Termination Date	Disrepair Actions Protocol	City Council	City Council	City Council	City Council
Disrepair Actions (where counterclaim of disrepair in possession proceedings)	City Council (as claimant subject to counterclaim) or Contractor (on behalf of City Council) at the City Council's option	Disrepair actions, Cut-Off Date to earlier of the Expiry Date and the Termination Date	Disrepair Actions Protocol	Contractor	Contractor	Contractor	Contractor
Disrepair Actions (where City Council has taken conduct of proceedings under paragraph 10A and Annex 2	City Council	Contract Period (subject to Annex 2)	Disrepair Action Protocol	Contractor (rates set out in Annex 2) save for	Contractor save for paragraph	Contractor (surveyor as expert rates set	Contractor save for paragraph

Type of Litigation	Conduct Party	Period of responsibility for conduct of Litigation	Cooperation Requirements of parties in addition to this Protocol	Litigation Costs (a) – Conduct Party’s costs	Litigation Costs (b) – Other Party’s costs of assistance	Litigation Costs (c) – expert’s costs	Litigation Costs (d) – third party’s costs
to this protocol				paragraph 10A.5	10A.5	out in annex 2) save for paragraph 10A.5	10A.5
Possession Proceedings/debt claim for tenant damage	City Council as claimant	Contract Period plus statutory limitation period	Tenant and Third Party Damage Protocol	City Council	Contractor	City Council	City Council
Access to Neighbouring Land Act 1992 – Access Orders	Contractor (on behalf of City Council as claimant)	Contract Period	Clause 18.7 (Third Party Rights)	Contractor	City Council	Contractor	Contractor



Type of Litigation	Conduct Party	Period of responsibility for conduct of Litigation	Cooperation Requirements of parties in addition to this Protocol	Litigation Costs (a) – Conduct Party’s costs	Litigation Costs (b) – Other Party’s costs of assistance	Litigation Costs (c) – expert’s costs	Litigation Costs (d) – third party’s costs
Proceedings to enforce terms of Lease / transfer / conveyance to secure access	City Council as claimant	Contract Period	Clause 18.7 (Third Party Rights)	City Council	Contractor	City Council	N/A
Party Wall etc. Act 1996 notice procedure and dispute resolution	Contractor on behalf of the City Council as claimant	Contract Period	Clause 18.7 (Third Party Rights)	Contractor	City Council	Contractor	Contractor
Proceedings under City Council litigation step in rights to assist Contractor pursuant to paragraph 11 of this Protocol	City Council (as claimant, assisting Contractor)	Contract Period	-	Contractor	City Council	Contractor	Contractor
Civil Claim against illegal occupiers / trespassers for eviction / damages in respect of New Build Sites	City Council (as claimant)	Contract Period other than where the Contractor has a licence pursuant	Access Protocol, Tenant and Third Party Damage	City Council	Contractor	City Council	City Council

Type of Litigation	Conduct Party	Period of responsibility for conduct of Litigation	Cooperation Requirements of parties in addition to this Protocol	Litigation Costs (a) – Conduct Party’s costs	Litigation Costs (b) – Other Party’s costs of assistance	Litigation Costs (c) – expert’s costs	Litigation Costs (d) – third party’s costs
and Demolition Sites		to clause 8.1.1	Protocol				
Civil Claim against illegal occupiers / trespassers for eviction / damages in respect of New Build Sites and Demolition Sites	City Council (as claimant) or Contractor	Period during which Contractor has a licence pursuant to clause 8.1.1	Access Protocol, Tenant and Third Party Damage Protocol	Contractor	Contractor	Contractor	Contractor
Civil Claim against illegal occupiers / trespassers for eviction / damages in respect of Refurbishment Sites during Void Periods	City Council as claimant or Contractor as claimant on the City Council's behalf	Contract Period	Access Protocol, Tenant and Third Party Damage Protocol	Contractor	Contractor	Contractor	Contractor
Claims for personal injury / damage to property (if within indemnity clause(s) pursuant to this Agreement)	Subject to Clause 58, Contractor (as defendant or with the City Council as	Contract Period plus statutory limitation period	Clause 58 (Indemnities, Guarantees and Contractual Claims) /	Contractor	Contractor	Contractor	Contractor

Type of Litigation	Conduct Party	Period of responsibility for conduct of Litigation	Cooperation Requirements of parties in addition to this Protocol	Litigation Costs (a) – Conduct Party’s costs	Litigation Costs (b) – Other Party’s costs of assistance	Litigation Costs (c) – expert’s costs	Litigation Costs (d) – third party’s costs
	defendant)		agreement between insurers				
Claims for personal injury / damage to property (if not within indemnity clause(s) pursuant to this Agreement)	City Council (as defendant)	Contract Period plus statutory limitation period	-	City Council	City Council	City Council	City Council
Claims for personal injury / damage to property (where both parties sued and conflict of interest).	Subject to Clause 58, Contractor and City Council (as defendants)	Contract Period plus statutory limitation period	Clause 58 (Indemnities, Guarantees and Contractual Claims) / agreement between insurers	As covered by indemnity or court order, otherwise parties bear own costs	As covered by indemnity or court order, otherwise parties bear own costs	As covered by indemnity or court order, otherwise parties bear own costs	As covered by indemnity or court order, otherwise parties bear own costs

Type of Litigation	Conduct Party	Period of responsibility for conduct of Litigation	Cooperation Requirements of parties in addition to this Protocol	Litigation Costs (a) – Conduct Party’s costs	Litigation Costs (b) – Other Party’s costs of assistance	Litigation Costs (c) – expert’s costs	Litigation Costs (d) – third party’s costs
Claim for personal injury / damage to property of Contractor (civil/criminal)	Contractor as claimant	Contract Period plus statutory limitation period	None	Contractor	Contractor	Contractor	Contractor
Criminal prosecution relating to the Project – e.g. health and safety / pollution (within indemnity provision)	City Council / Contractor or both as defendants	Contract Period plus statutory limitation period	Clause 58 (Indemnities, Guarantees and Contractual Claims)	Contractor	Contractor	Contractor	Contractor
Breach of contract claim from sub-contractor / third party	Contractor (as defendant)	Contract Period plus statutory limitation period	PA Notification Requirements including without limitation clause 5.2.1	Contractor	Contractor	Contractor	Contractor

## Annex 2 – Disrepair Action Conduct Protocol

### Scope of conduct

1. “**Disrepair Claims**” means any claim subject of a Disrepair Action save for claims brought by Leaseholders in relation to a Leaseholder Lease.
2. Disrepair Claims are brought against the City Council as landlord/person responsible.
3. The Disrepair Claims are for :
  - breach of the express repairing obligation contained in the tenancy agreement and/or breach of the implied repairing covenant contained in Section 11 to the Landlord & Tenant Act 1985.
  - Personal injury or property damage caused by disrepair and obligation to prevent the condition of the dwelling causing injury or property damage under section 4 of the Defective Premises Act 1972
  - Statutory nuisance arising under the Environmental Protection Act 1990 which is a criminal procedure in the Magistrates Court.

### Activities undertaken

4. Where the City Council takes conduct of a Disrepair Claim pursuant to paragraph 10A.1 of the Litigation Protocol, such Disrepair Claim shall be conducted by the City Council’s “**Housing Disrepair Team**” and shall be handled by either a Principal legal Officer or a Senior Legal Officer and (where appropriate) a Surveyor.
5. The costs incurred by the City Council in respect of the work carried out by the Housing Disrepair Team in respect of the Disrepair Claim shall be payable by the Contractor on receipt of an invoice in respect of the same subject to Appendix 1H Litigation Protocol Annex 1. The cost shall be based on the hourly rates of the officers carrying out such work (such rates to be reviewed annually by the City Council and any increase to be approved by the Contractor and such approval shall not be unreasonably withheld or delayed) as follows:
  - a. Principal Legal Officer - £[\*\*\*] per hour
  - b. Senior Legal Officer - £[\*\*\*] per hour

- c. Surveyor - £[\*\*\*] per hour
6. All civil Disrepair Claims shall be dealt with under the Housing Disrepair Pre-action Protocol as set out in the Civil Procedure Rules. The Contractor acknowledges that the Housing Disrepair Team shall conduct the Disrepair Claim with the object of settling such claim without undertaking formal Court action.
  7. On receipt by the Housing Disrepair Team of either an Early Notification Letter or Letter of Claim from either the tenant or the tenant's legal representative, a copy of it shall be sent to the City Council's Claims and Compliance team in order that a Surveyor shall be allocated the claim and the relevant computerised repair history shall be e-mailed to the Housing Disrepair Team copied to the Contractor. In the event that an Early Notification Letter or Letter of Claim is received by the Contractor, the Contractor shall immediately send such letter to the Housing Disrepair Team.
  8. Once the Surveyor has been allocated to the Disrepair Claim and such allocation is notified to the Housing Disrepair Team, the Surveyor shall be formally instructed to inspect the relevant property in person or to conduct a joint inspection with the Claimant's expert. The City Council shall give the Contractor the opportunity to attend the relevant property with the Surveyor. The Surveyor shall also be instructed to collect the relevant house file from the relevant Neighbourhood Office.
  9. The Housing Disrepair Team shall respond to the Early Notification Letter or Letter of Claim within twenty (20) Working Days of receipt and shall:
    - make pre-action disclosure of computerised repair records,
    - agree to the use of experts as relevant,
    - advise on disclosure of the house file on receipt of the same,
    - ensure that a substantive response will be given in respect of the Disrepair Claim on receipt of the survey.
  10. On receipt of the house file, relevant disclosure will be made, provided that the Claimant's solicitor has provided a signed authority from the Claimant.
  11. In the event of any access problems to the relevant premises being encountered, the Claimant's representative will be advised and an amicable solution sought. If this is not possible then Section 54 proceedings and / or an injunction will be considered.

12. On receipt of the survey report and order for proposed works being received, a copy will be sent to the Claimant's representative and the Contractor. In the case of a joint report, any agreed works will be undertaken by the Contractor.
13. In the case of separate expert reports and areas of disagreement, the Claimant's representative will be asked to agree to either a telephone discussion or joint site visit to resolve any outstanding issues.
14. Once repair works have been agreed pursuant to paragraph 12 or 13 above, and the Claimant's representative has been advised of the expected date of completion of any works, the Housing Disrepair Team will:
  - a. notify the Contractor of the agreed repair works which the Contractor shall undertake.
  - b. investigate whether legal responsibility is accepted, details of any notice of disrepair established and what level of compensation, if any the tenant is entitled to. An offer of settlement will include an offer to pay the Claimant's reasonable legal costs.
  - c. not make an offer of settlement without the Contractor's prior consent (not to be unreasonably withheld or delayed).

#### **CIVIL PROCEEDINGS IN THE COUNTY COURT**

15. Where proceedings are issued and served on the City Council, the Housing Disrepair Team shall file an acknowledgment of service and a defence (which will also make admission if this is necessary).
16. The Housing Disrepair Team will attend any direction hearings and prepare the case for trial in accordance with any direction given.
17. If the Housing Disrepair Team considers that there is liability an offer of settlement will be made provided that it has received the Contractor's prior consent to such settlement (such consent not to be unreasonably withheld or delayed).
18. Counsel's opinion on quantum and liability will be sought if required.
19. In the event of the Disrepair Claim going to trial, the Housing Repairs Team shall instruct Counsel.

## APPENDIX 11

### Trees Protocol

#### PART 1 - CYCLICAL TREE SURVEYS

1	SURVEY BRIEF
1.1	A cyclical survey is to be undertaken of the Project Sites at least annually (the “ <b>Cyclical Tree Survey</b> ”)
1.2	<p>The Cyclical Tree Survey shall include the following:-</p> <ul style="list-style-type: none"><li data-bbox="427 734 1407 824">1.2.1 the identification of every tree located within the Project Sites and within the curtilage or boundary of each of the Properties</li><li data-bbox="427 869 1407 958">1.2.2 the location of each tree will be plotted using the Geographic Information System and mapped;</li><li data-bbox="427 1003 1407 1093">1.2.3 each tree shall be identified as a City Council, Contractor, Tenant or freeholder responsibility.</li><li data-bbox="427 1137 1407 1227">1.2.4 the identification of each tree that abuts the Project Sites or abuts the boundary of any Property.</li></ul>
1.3	<p>The Cyclical Tree Survey shall record the following details of each tree:</p> <ul style="list-style-type: none"><li data-bbox="427 1350 1407 1395">1.3.1 its species in Latin and English;</li><li data-bbox="427 1440 1407 1485">1.3.2 its height, diameter, age class and physical condition;</li><li data-bbox="427 1529 1407 1574">1.3.3 other relevant information regarding the nature of the tree;</li><li data-bbox="427 1619 1407 1753">1.3.4 other relevant information regarding the relationship of the tree to the Property and to other of the Property's associated structures, including walls and fences.</li></ul>
1.4	<p>The Cyclical Tree Survey shall identify and classify the recommended works for each tree as follows:-</p> <ul style="list-style-type: none"><li data-bbox="427 1910 1407 1955">1.4.1 emergency works (trees that are dead, dying, and dangerous or</li></ul>



1	SURVEY BRIEF
	<p>are imminently dangerous).</p> <p>1.4.2 essential works being:-</p> <p>(a) trees that are causing obvious structural damage or are so close to the Property or an associated structure that physical damage is unavoidable;</p> <p>(b) trees that are dead, dying or are becoming physically unsound but not imminently;</p> <p>(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).</p> <p>1.4.3 necessary works (trees that are considered likely to cause damage to the Property or an associated structure in the future unless avoidance action is taken e.g. large trees, self sown trees).</p> <p>1.4.4 desirable works (trees in respect of which future action is considered to be desirable in order to protect the Property or an associated structure but not essential).</p> <p>1.4.5 works are required by a third party</p> <p>1.4.6 no action required (trees where no action is required).</p>
1.5	The Cyclical Survey shall identify the trees that require cyclical pruning and recommend the length of the pruning cycle.

## PART 2 – TREE MAINTENANCE

<b>2</b>	<b>TREE MAINTENANCE - GENERAL</b>
2.1	Subject to paragraph 1.2 below; the Contractor shall carry out Tree Maintenance in respect of all trees within the Project Areas and shall carry out such maintenance in accordance with the terms of this protocol. For the avoidance of doubt, for the purposes of this protocol, the term “trees” refers to those trees which existed at the Commencement Date and all new trees planted by the Contractor as part of the New Build Works or Environmental Works.
2.2	<p>2.2.6 The Contractor shall not be responsible for: Tree Maintenance in respect of trees existing at the Commencement Date which are:</p> <p>2.2.7 within the curtilage of Dwellings; or</p> <p>2.2.8 on any adopted highway land.</p> <p>2.2.9 Tree Maintenance on trees outside of the Project Areas;</p>
2.3	The Contractor shall appoint a suitably qualified Arboriculturalist, as its Tree Maintenance sub-contractor
2.4	The Contractor shall procure that the appointed Arboriculturalist shall undertake the required Cyclical Tree Survey in the form outlined in Part 1 above.
2.5	The Contractor and the Arboriculturalist are required to operate in accordance with the City Council's Tree Policies.
2.6	Where the City Council's Tree Policies prevent the Contractor from complying with its Tree Maintenance obligations, this shall be deemed to be an Excusing Event Where however the Contractor has notified the City Council in advance of the impact of it's polices and the City Council has refused consent under this Protocol it shall be deemed to be a Compensation Event.
2.7	<p>The Contractor should seek prior authorisation from the City Council prior to undertaking any major work on trees and prior to the removal of any tree (other than in the case of emergencies).</p> <p>The following information should be provided to the City Council in respect of all</p>

<b>2</b>	<b>TREE MAINTENANCE - GENERAL</b>
	<p>major works on trees or removals of trees:</p> <ol style="list-style-type: none"> <li>1. the likely impact of any felling or pruning proposals on the local amenity</li> <li>2. the impact of the proposals on the character and health of the tree</li> <li>3. the nature of the particular problem generating the need for tree Maintenance, such as: <ul style="list-style-type: none"> <li>• proximity to buildings, roofs / gutters</li> <li>• sunlight penetration and excessive shade cast to buildings and gardens</li> <li>• proximity to minor structures, such as fences, walls, garages and driveways</li> </ul> </li> </ol> <p>The City Council shall respond as soon as is reasonably practicable to such request for authorisation from the Contractor to undertake any major work on trees, or to remove any trees.</p>
2.8	The Contractor shall ensure that a Cyclical Tree Survey is undertaken annually on all trees within the Project Areas.
<b>3</b>	<b>TREE MAINTENANCE AND CYCLICAL PRUNING</b>
3.1	The Contractor shall ensure that all Tree Maintenance it undertakes is carried out in accordance with the Cyclical Trees Survey.
3.2	The Contractor shall also undertake to carry out all emergency Tree Maintenance within the curtilage of Dwellings. All such Tree Maintenance are to be considered as Tenant Damage in accordance with the Tenant and Third Party Damage Protocol.
3.3	The Contractor will inform the City Council within five (5) working days of any emergency works that have had to be undertaken within the curtilage of Dwellings, and any other works required within the curtilage of Dwellings or are required to be undertaken by third parties.
3.4	The Contractor shall also undertake all other works and pruning to trees within the

<b>2</b>	<b>TREE MAINTENANCE - GENERAL</b>
	curtilage of Dwellings following the issue of a City Council Change Notice by the City Council. Such other works and pruning shall be carried out in accordance with the Change agreed by the Contractor and City Council in accordance with the Change Protocol.
3.5	<p>The Contractor will only normally be permitted to remove trees in the following circumstances (subject to the prior consent of the City Council as noted above):</p> <ol style="list-style-type: none"> <li>1 Removal of self seeded saplings that are giving rise to a nuisance;</li> <li>2 Any tree that is unsafe and cannot be pruned to make safe;</li> <li>3 Any tree that is causing structural damage to Properties, including neighbouring Properties; and</li> <li>4 Any tree that is significantly impacting on the right to light and pruning action would not be effective.</li> </ol> <p>Where trees are removed, the Contractor should provide for a replacement tree to be planted in a suitable location on the estate, observing the convention 'right tree for the right location'.</p>
3.6	The Contractor and any appointed specialist including the Arboriculturalist shall provide the City Council with all reasonable assistance in taking enforcement action in order to facilitate the undertaking of emergency, essential or necessary works, or for the recovery of costs incurred in undertaking those works.

## APPENDIX 1J

### Marketing and Media Protocol

#### 1. INTRODUCTION

##### 1.1 The Parties acknowledge:

1.1.1 not used;

1.1.2 that the scale and scope of the Project for Little London and Beeston Hill & Holbeck, covering two distinct areas and number of key players, requires careful management of communications, marketing and media relations to ensure consistency of approach and messages and to protect the reputation of the City Council and Contractor.

1.1.3 that the Project clearly defines roles and responsibilities and reporting procedures in relation to communications, marketing and media relations in respect of the Project between the City Council, the ALMOs and the Contractor and its Sub-Contractors;

1.1.4 that there will be instances where it is appropriate for the City Council to approve communications, marketing and media relations material produced by the Contractor or its Sub-Contractors as set out in this Protocol prior to such material being distributed; and

1.1.5 that each Party shall have a designated point of contact for communications, marketing and media relations, the identity and contact detail of whom shall be notified to the other Party. If a Party replaces such point of contact, the identity and contact details of the replacement shall be notified to the other Party.

1.2 Prior to the Initial Services Commencement Date (Refurbishment), the Contractor shall establish a communications steering group with support from the City Council details of which are set out in (the "Communications Steering Group"). The Communications Steering Group shall be attended on an on-going basis throughout the Contract Period by representatives of the City Council, the ALMOs, the Contractor and key Sub-Contractors.

## **2. MOBILISATION PERIOD**

The following provisions shall apply prior to the Initial Services Commencement Date (Refurbishment):

### **2.1 Media**

The City Council will retain the lead on all media relations in respect of the Project. The Contractor's and / or any Contractor Related Parties' press material relating to the Project shall be approved by the City Council (such approval not to be unreasonably withheld or delayed).

### **2.2 Marketing materials**

Any marketing material to be prepared and used by the Contractor or Contractor Related Party to introduce themselves to the community shall be agreed and approved (such approval not to be unreasonably withheld or delayed) by the City Council.

## **3. SERVICE PERIOD**

The following provisions shall apply after the Initial Services Commencement Date (Refurbishment):

### **3.1 Communications Steering Group**

3.1.1 The Communications Steering Group shall develop, implement and review a communications, marketing and media relations strategy to respond to the needs of the Project in respect of communications, marketing and media relations.

3.1.2 The Communications Steering Group shall have regard to any issues relating to communications, marketing or media relations arising from the Project Liaison Group.

### **3.2 Marketing Materials**

The Contractor is responsible for the production of branded, printed, web based and marketing materials distributed within the community from the Contractor itself or any of its Sub-Contractors. The Communications Steering Group will oversee the production of any such marketing materials to

standards and compliance with the branding for the Project which shall be approved by the City Council.

### **3.3 Media relations**

#### **3.3.1 Roles and Responsibilities**

3.3.1.1 The Parties acknowledge that it is important to carry out their own roles and responsibilities in respect of media relation as set out in this Protocol so not to lose out on positive PR opportunities and to be able to respond quickly and effectively to any issues arising in respect of the Project.

##### **3.3.1.2 The City Council**

The Parties acknowledge that the City Council's marketing and media relations activities will be focused on overarching marketing and media relations issues relating to the Project such as funding announcements, and key milestones. The City Council will use information from the Project where it can support the approach to, and profile of, regeneration in Leeds including without limitation PR opportunities, feature articles, press tours, case studies.

##### **3.3.1.3 Contractor**

The Parties acknowledge that the Contractor's marketing and media relations activities will cover news stories and announcements relating to the day-to-day management of the Project in compliance with paragraph 3.3.2 (Press materials protocol) below and subject to Clause 74 (Public Relations and Publicity).

#### **3.3.2 Press materials protocol**

3.3.2.1 Notwithstanding paragraph 3.3.1 (Roles and Responsibilities), the Contractor and its Sub-Contractors may issue their own press material on issues relating specifically to their organisation, provided that where such

press material relates to any element of the Project, such press material should be sent to the City Council no later than two (2) Working Days prior to the intended date of publication for approval by the City Council (such approval not to be unreasonably withheld or delayed).

3.3.2.2 All press releases issued by Contractor and its Sub-Contractors which relate to the Project should:

3.3.2.2.1 make reference to the City Council and the project key messages agreed by the Communications Steering Group (as relevant), and the City Council shall be entitled to amend the press material where it is appropriate to achieve this in the City Council's reasonable opinion;

3.3.2.2.2 include standard notes to editors on the Project funding and contract arrangements where the press release relates to Project Sites.

3.3.3 The Contractor shall inform the City Council immediately of any issues arising in respect of the Project which are likely to raise media interest.

#### **3.3.4 Media enquiries**

Media enquiries received in respect of the Project by the Contractor or any Contractor Related Party should be notified immediately to their respective press contact, press office or PR agency and should be notified immediately to the City Council's designated communications contact as referred to in paragraph 1.1.4 above who will respond to the enquiry or direct the Contractor or Contractor Related Party at its sole discretion.

#### **3.3.5 Statements**

The City Council will issue or approve (pursuant to paragraph 3.3.2 (Press materials protocol)) all press statements as necessary relating to the Project. The Contractor shall provide factual supporting



information when requested by the City Council. If the City Council's approval is sought in relation to a press statement, such approval shall not be unreasonably withheld or delayed.

### **3.3.6 Spokespeople**

3.3.6.1 A list of spokespeople from all the Contractor and its Sub-Contractor shall be provided to the City Council prior to the Initial Services Commencement Date (Refurbishment), which shall be updated by the Contractor from time to time as appropriate.

3.3.6.2 When required, Q&As and briefing materials will be agreed between members of the Communications Steering Group to ensure consistency of messages on the Project to press, community, members of the City Council and key stakeholders.

## APPENDIX 1K

### ICT Protocol

#### Part 1

#### 1. DEFINITIONS

**“Aggregated Data”** means Data grouped together to the extent that no living individual can be identified from that Aggregated Data or any other Data in the possession of, or likely to come into the possession of any person obtaining the Aggregated Data;

The recipient(s) of the research findings (including Aggregated Data) for the purposes of this Agreement is/are staff employed by the Data Processor; **“City Council Housing Data”** means all data held on City Council Systems as master system as identified in Part 4 below;

**“City Council IT System”** means any and all information technology systems (including hardware and software) required to be used by the City Council for meeting the requirements of the Agreement, including but not limited to the following systems: Orchard Housing (ArcHouse), Keystone, PS Team and AMS;

**“Confidential Information”** means any information relating to the Data Controller’s customers and prospective customers, current or projected financial or trading situations, business plans, business strategies, developments and all other information relating to the Data Controller’s business affairs including any trade secrets, know-how and any information of a confidential nature imparted by the Data Controller to the Data Processor during the term of this Agreement or coming into existence as a result of the Data Processor’s obligations, whether existing in hard copy form or otherwise, and whether disclosed orally or in writing. This definition shall include all Personal Data;

**“Contractor IT System”** means any and all information technology systems (including hardware and software) required to be used by the Contractor for the purposes of performing the Works and Services;

**“Data”** includes Confidential Information, City Council Housing Data (including Initial Data), Personal Data, Sensitive Personal Data and Aggregated Data;

**“Data Controller”** has the meaning set out in section 1(1) of the Data Protection Act 1998;

**“Data Processor”** has the meaning set out in section 1(1) of the Data Protection Act 1998;

**"Data Provider"** shall mean for the purposes of part 3 (*Information Service Level Requirements*) of this Protocol any party who is required to provide data in accordance with the terms of this Protocol;

**“Data Subject”** means individual who is the subject of Personal Data;

**"Data Transfer Rules"** means the data transfer rules set out at part 2 (*Data Transfer Rules*) to this Protocol;

**"Housing IT Systems Data"** means any and all records, information and data relating to the Works, Services, Project, Dwellings or other Properties which may be generated, stored, saved or otherwise produced by the Contractor on or using the Contractor IT Systems for the purposes of the Project;

**"Information Service Level Requirements"** means the information service level requirements set out at part 3 (*Information Service Level Requirements*) to this Protocol;

**"Initial City Council Housing Data"** means the City Council Housing Data in existence as at the date of transfer pursuant to paragraph 2 below;

**“Personal Data”** has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, of which the Company is the Data Controller and in relation to which the Processor is providing services under this Agreement;

**“Processing and process”** has the meaning set out in section 1(1) of the Data Protection Act 1998;

**"Receiver"** shall mean for the purposes of part 3 (*Information Service Level Requirements*) of this Protocol, any party receiving data in accordance with this Protocol; and

**“Sensitive Personal Data”** means Personal Data consisting of information about the Data Subject’s racial or ethnic origin, political opinions, religious or similar beliefs, trade union membership, physical or mental health or condition, sexual life, or commission of or proceedings for any offence committed or alleged to have been committed by the Data Subject.

## **2. INITIAL CITY COUNCIL HOUSING DATA**

The City Council shall transfer a copy of all the Initial City Council Housing Data that is relevant to the contract from the City Council IT System to the Contractor IT System on or before the Commencement Date. The City Council shall not be in breach of this paragraph 2 if and to the extent that the Initial City Council Housing Data is not transferred to the Contractor IT System due to a matter outside of the City Council's or its sub-contractor’s reasonable control.

## **3. CITY COUNCIL UPDATES**

- 3.1 At least once every ten (10) Working Days, and also on the Initial Service Commencement Date, the City Council shall provide the Contractor with an update of any changes to the City Council Housing Data, that have occurred since the previous such update, to allow the Contractor to synchronise the Housing IT Systems Data with the City Council Housing Data provided. The City Council shall provide such updates in accordance with the Data Transfer Rules and Information Service Level Requirements.
- 3.2 If the City Council becomes aware of any circumstance which has the effect of preventing the City Council from providing the Contractor with any update in accordance with paragraph 3.1 above, the City Council shall notify the Contractor in accordance with the Information Service Level Requirements as soon as reasonably practicable.
- 3.3 If the Contractor is either
  - 3.3.1 notified in accordance with clause paragraph 3.2; or
  - 3.3.2 becomes aware of any circumstance which has the effect of preventing the download of the update to be provided in accordance with paragraph 3.1, and the Contractor notifies the City Council of this in accordance with the Information Service Level Requirements,

**Error! Bookmark not defined.**then the City Council shall provide the Contractor with hard copy updates of any changes to the tenancy information within five (5) Working Days of the date of such notification, and on a weekly basis thereafter, until such date as the City Council is again able to provide the updates in accordance with paragraph 3.1.

#### **4. EFFECT OF FAILURE BY THE CITY COUNCIL TO COMPLY**

4.1 A failure by the City Council to comply with its obligations in paragraphs 2 or 3.3 above shall only be a Compensation Event to the extent that such failure impacts upon the Contractor's ability to carry out the Refurbishment Works or any maintenance works (in circumstances where the Contractor is not aware that such maintenance works is the responsibility of the City Council) and such Compensation Event shall:

4.1.1 in the case of a breach of paragraph 2, commence on the date that the City Council was due to transfer the Initial City Council Housing Data and end on the date that such Initial City Council Housing Data leaves the City Council IT System; and

4.1.2 in the case of a breach of paragraph 3.3, commence on the date that the City Council was due to update the Contractor with the hard copy tenancy information and end on the date that the City Council actually provides such tenancy information to the Contractor,

provided always that the Contractor is complying with its obligations pursuant to paragraph 5 below.

4.2 Notwithstanding paragraph 4.1, a failure by the City Council to comply with its obligation in paragraph 3.3 after the Planned Full Services Commencement Date (Refurbishment) shall not be a Compensation Event but shall be deemed to be an Excusing Event in respect of the affected Dwellings only, commencing on and from the date that the City Council was due to update the Contractor with the tenancy information in accordance with paragraph 3.3, and ending on the date that the City Council actually updates the Contractor with the tenancy information, provided that the Contractor is complying with its obligations pursuant to paragraph 5 below.

## 5. CONTRACTOR UPDATES

**Error! Bookmark not defined.**The Contractor shall provide the City Council with an update of any changes to the Housing IT Systems Data in accordance with the data transfer timescales set out in part 4 (Data Transfer Timescales) to this Protocol to allow the City Council to synchronise the City Council Housing Data with the Housing IT Systems Data. The Contractor shall provide such updates in accordance with the Data Transfer Rules and Information Service Level Requirements.

## 6. CONTRACT DATA AND SYSTEMS

The City Council and the Contractor shall comply with their respective obligations under part 5 (*Contract Data and Systems*) of this Protocol which sets out how the City Council IT Systems and Contractor IT Systems will be used.

## 7. DATA PROTECTION

The Contractor acknowledges and accepts that the City Council shall not be in breach of any provision of this Protocol if and to the extent that the City Council does not comply with such provision because, in complying with such provision, the City Council would be breaching any relevant Legislation (including, without limitation, the Data Protection Act 1998).

Part 6 details the process proposed for the handling of confidential and personal data, required for the Works and Services, are noted to ensure compliance with the relevant legislation. All Data required for the implementation and delivery of the contract is deemed to be City Council data and subject to the City Council being the Data Controller.

## Part 2

### Data Transfer Rules

Rules	
1:	The interface will be bi directional.
2:	Files will be delivered to a secure FTP location for use by both sides
3:	All files incoming to the City Council will be processed by the City Council information hub.
4:	All files incoming to the Contractor will be processed by the Contractor interface
5:	The preferred format for the data transfer files will be XML.
6.	Named contacts should be provided and maintained for all parties for the life of the contract.

### Part 3

#### Information Service Level Requirements

Service	How is the service accessed and provided?	Service Standards	Measurement of Quality	Data Provider's Responsibility	Service Delivery KPI	Receiver's Responsibility	Problem Diagnosis
Messaging to/from Leeds City Council							
<b>Reconciliation of data transfers and receipts</b>	<p>A header or trailer record containing the number of transactions will be reconciled with the number transferred.</p> <p>Production of a proof list of that day's transmissions on request.</p>	<p>The header or trailer record to be sent at an agreed time each day.</p> <p>The proof list is produced within the agreed time period following request.</p>	<p>The receipt of the header or trailer record at the agreed time each day.</p> <p>The receipt of the proof list is within the agreed time period following the request.</p>	<p>To calculate the number of transactions in each file and to send this figure at the agreed time each day.</p> <p>To produce and send a proof list of a day's transactions within the time period agreed</p>	<p>This figure is received at the agreed time each day.</p> <p>The proof list is received within 24 hours of the request being received.</p>	<p>To receive this header or trailer record and to reconcile this figure with its transactions each day and to report any discrepancies.</p> <p>To use the proof list only when necessary to identify missing</p>	<p>In the event of a problem being identified during data exchange, reasonable efforts shall be made by both parties to diagnose the cause of the problem, informing the other party of what methods are being employed and what outcome</p>



Service	How is the service accessed and provided?	Service Standards	Measurement of Quality	Data Provider's Responsibility	Service Delivery KPI	Receiver's Responsibility	Problem Diagnosis
				following the request.		transactions.	of any tests or checks has been
<b>Request for data transfers to be resent</b>	The Data Provider will resend the transactions file(s) notified to them as not been received or not been successfully received.	The capability to resend the notified transactions file(s) in the agreed time period	The notified transactions file(s) to be resent in the agreed time period	To provide the capability to be able to resend notified transactions file(s) within the agreed time period..	To resend the requested transactions file(s) within 2 working hours following the request.	To request any resends as soon as they are identified.	In the event of a problem being identified during data exchange, reasonable efforts shall be made by both parties to diagnose the cause of the problem, informing the other party of what methods are being employed and what outcome of any tests or

Service	How is the service accessed and provided?	Service Standards	Measurement of Quality	Data Provider's Responsibility	Service Delivery KPI	Receiver's Responsibility	Problem Diagnosis
							checks has been
<b>Communication between Operational Sections</b>							
<b>Notification of operational problems affecting data transfers</b>	The notification will be effected by nominated contacts within each Operational Section.	Timely notifications of problems impacting on transfers.	Notifications are received by the nominated contact(s).  Notifications are received in a timely manner.	To notify the nominated contact(s) as soon a practicable after a problem is identified, in the agreed format	24/7 ability to notify each other of problems within 30 minutes of the identification of a problem.	There will be a reciprocal responsibility on behalf of the Receiver to notify nominated contacts at the Data Provider of any problems with their infrastructure impacting on the receipt of transfers as soon as reasonably practicable.	In the event of a problem being identified during data exchange, reasonable efforts shall be made by both parties to diagnose the cause of the problem, informing the other party of what methods are being employed and what outcome of any tests or

Service	How is the service accessed and provided?	Service Standards	Measurement of Quality	Data Provider's Responsibility	Service Delivery KPI	Receiver's Responsibility	Problem Diagnosis
							checks has been
<b>Notification of changes to infrastructure or record formats affecting the successful receipt of transfers</b>	The notification will be effected by nominated contacts within each Operational Section.	Timely notifications of changes affecting transfers	Notifications are received by the nominated contact(s).  Notifications are received in a timely manner.	To identify changes to infrastructure or message format which could potentially impact on transfers.  To notify the nominated contact(s) in a timely manner especially where reciprocal changes need	Notification of changes to be received not less than 2 weeks before the changes are actioned for infrastructure changes and 1 month for record format changes.	There will be a reciprocal responsibility on behalf of the Receiver to notify nominated contacts at the Data Provider of any changes within their infrastructure impacting on the receipt of transfers.	In the event of a problem being identified during data exchange, reasonable efforts shall be made by both parties to diagnose the cause of the problem, informing the other party of what methods are being employed and what outcome of any tests or checks has been

Service	How is the service accessed and provided?	Service Standards	Measurement of Quality	Data Provider's Responsibility	Service Delivery KPI	Receiver's Responsibility	Problem Diagnosis
				to be made.			

## Part 4

### Data Transfer Timescales

Data	Master System	Frequency	Slave system(s)	Notes
Property Data	Orchard Housing (ArcHouse)	Daily	Contractor IT System  PSTeam  Keystone  AMS	Will include property attributes
Tenancy Data	Orchard Housing (ArcHouse)	Daily	Contractor IT System PS Team  Contractor IT System	Will include any vulnerability data held.
SOR Items	Orchard Housing (ArcHouse)	As required after initial transfer	Contractor IT System	Add in link back from Contractor IT System to Orchard (ArcHouse) for any new SOR items created for service delivery.
Asset Data	Keystone	Daily	Contractor IT System	Includes all stock condition survey information, works completed history and

Data	Master System	Frequency	Slave system(s)	Notes
			Orchard Housing PS Team AMS	planned service history.  Keystone will be kept up to date via PS Team and Contractor IT System
Asbestos Information	AMS	Daily	Contractor IT System Orchard Housing (ArcHouse) (Flag)  PS Team	PS2000 will be kept up to date by the Contractor through direct use and access to PS2000
Repair Orders	Contractor IT System	Daily	Orchard Housing (ArcHouse)	Orders and Order statuses will be updated in Orchard from Contractor IT System
Capital Works (Refurbishment stock)	PS Team	Daily	Keystone  Contractor IT System	Includes refurbishment works and life cycle works.  Details of the capital works program will need to be known to Contractor IT System to enable efficient scheduling and customer

Data	Master System	Frequency	Slave system(s)	Notes
				service
Capital Works (New Build)	PS Team	Daily	Contractor IT System Keystone	Includes new build works and demolition works.  Details of the new build works program will need to be known to Contractor IT System to enable efficient scheduling and customer service following handover of properties.

## Part 5

### Contract Data and Systems

Service	Lead Organisation	Lead Contract System	Information Transfer	Linked Dependency
<b>1. Customer Contact</b>	Contractor Liaison and help desk to receive all calls and customer requests, with out of hours calls routed to Contractor call centre	Contractor IT System to act as CRM system for all customer contacts.	No customer contact data required to be transferred back to the City Council.	No proposal to link data from the City Council customer contact CRM or other IT System.
<b>2. Property and Tenant Data</b>	The Contractor will use property and tenancy data to assist delivery of works and services under the contract.	The Contractor will load all property and tenancy data into the Contractor IT System for Works and Services delivery. The Contractor will use the City Council IT System for Works delivery as required.	City Council IT System to provide data on list of properties within the Contract and list of tenants to populate all Contractor IT Systems as required.	Contractor to receive data from the City Council' IT Systems to update property and tenancy data in accordance with paragraphs 2 and 3 of part 1 to this Protocol.  Read only access required for Contractor to City Council IT System for any back up verification of tenancy and property data.



Service	Lead Organisation	Lead Contract System	Information Transfer	Linked Dependency
<b>3. Repairs Orders</b>	The Contractor is to be the main sub-contractor for undertaking the repairs service.	Contractor IT System to log all repairs and repairs activity through to completion	<p>Contractor IT System will require a repair job number from City Council IT System for transfer of on-going repair activity data from Contractor IT System, other than a scenario of single transfer of data on completion or cancellation of each order.</p> <p>City Council IT System to provide pre-contract repair history to the Cyclical Maintenance and Renewal Contractor as required, either as data download or read only access to Orchard (may be both)</p>	All repair requests including the details of works done, timescales and appointments as per Annex 22 of the Output Specification required to be loaded back into the City Council's IT systems (Orchard) to ensure the City Council holds an up to date and accurate record of the repair history of each property.
<b>4. Asbestos Information</b>	The Contractor is to undertake the main lead role (Asbestos Manager) for updating	City Council IT System to be used by the Contractor or one of the sub-contractors	Contractor IT System will require data to be transferred from City Council IT System to	Contractor IT System will receive data from City Council IT System in accordance with

Service	Lead Organisation	Lead Contract System	Information Transfer	Linked Dependency
	<p>information on the presence and work on asbestos, including removal, during both the Works and Operational Services period.</p>	<p>for the management of all asbestos information.</p>	<p>provide full information to operatives undertaking repairs, voids or planned maintenance via mobile link to operatives.</p>	<p>paragraphs 2 and 3 of part 1 to this Protocol.</p> <p>The Contractor will require user rights and training for City Council IT System to undertake 'Asbestos Manager' role for the maintenance of the asbestos register in City Council IT System.</p>
<p><b>5. Cyclical maintenance and servicing</b></p>	<p>The Contractor is to undertake the required cyclical servicing and maintenance for the contract.</p>	<p>Contractor IT System to log all planned works and activity.</p>	<p>Contractor IT System to provide updates of completion of cyclical maintenance and servicing in accordance with Annex 22 of the Output Specification to update the City Council IT System. NB Any repair call-outs linked to cyclical servicing and maintenance should be logged as repairs as above.</p>	<p>A finalised list of assets to be serviced and last service date for service commencement, to be provided to the Contractor in accordance with paragraph 2 of part 1 to this Protocol.</p>

Service	Lead Organisation	Lead Contract System	Information Transfer	Linked Dependency
<b>6. Planned life cycle works.</b>	The Contractor is to undertake the required life cycle works for the contract	<p>The Contractor will log all details of works planned and undertaken on their own systems.</p> <p>As with the refurbishment works they may seek to use City Council IT System to manage planned programmes of life cycle renewal and will require full user access to City Council IT System in such case.</p>	<p>Data on all life cycle works completed will be transferred to the City Council in accordance with Annex 22 of the Output Specification to allow the City Council to update the City Council IT System.</p> <p>The Contractor, by using City Council IT System, will make use of the existing data transfer facility between different elements of the City Council IT System</p>	Data from The City Council IT System to be used by the Contractor for property information, survey data (see item 11 below) and element renewal dates to help plan out the life cycle programme. Such data to be provided in accordance with paragraphs 2 and 3 of part 1 to this Protocol.
<b>7. Estate Maintenance</b>	The Contractor will be undertaking the required estate maintenance services including landscaping works, grass cutting, tree maintenance, litter picking etc.	The Contractor IT System to log all service activity in relation to estate maintenance	No specific information is required for transfer back to the City Council on estate services, and the Contractor shall grant the City Council read only access to Contractor	The Contractor will require an initial set of information at service commencement to confirm the estate and land areas required to be serviced. This shall be provided by the

Service	Lead Organisation	Lead Contract System	Information Transfer	Linked Dependency
			IT System to verify data and information.	City Council in accordance with paragraph 2 of part 1 to this Protocol. This may be provided as electronic data or hard copy data. The Contractor may refer any land queries to the City Council.
<p><b>8. Refurbishment Works.</b></p>	<p>The Contractor is to undertake the required refurbishment works for the contract</p>	<p>The Contractor will log all details of works planned and undertaken on the City Council's City Council IT System.</p> <p>Use will be made of Building Contractor systems for planning and back office functions.</p>	<p>Data on all refurbishment works completed will be transferred to the City Council in accordance with Annex 22 of the Output Specification to allow the City Council to update the Keystone Asset Management system.</p> <p>The Contractor, by using City Council IT System, will make use of the existing data transfer facility between different elements of the City</p>	<p>The Contractor will rely on data from City Council IT System for property information to help plan out the refurbishment programme, using the existing data transfer arrangement to other elements of the City Council IT System.</p> <p>Regular updates on tenancy data as per section 2 above shall be provided by the City Council in accordance with paragraphs 2 and 3 of part 1 to</p>

Service	Lead Organisation	Lead Contract System	Information Transfer	Linked Dependency
			Council IT System.	this Protocol.
<b>9. Demolition Works</b>	The Contractor is to undertake the required demolition works for the contract	<p>The Contractor will log all details of works planned and undertaken on their own systems.</p> <p>As with the refurbishment works they may seek to use City Council IT System to manage the demolition programme and will require full user access to relevant part of the City Council IT System in such case.</p>	<p>Data on all demolition works completed will be transferred to the City Council in accordance with Annex 22 of the Output Specification to update the City Council IT System.</p> <p>The Contractor, by using City Council IT System, will make use of the existing data transfer facility between different elements of the City Council IT System.</p>	Data from City Council IT System for property information shall be used by the Contractor to help plan out the demolition programme, using the existing data transfer arrangement with City Council IT System, in accordance with paragraphs 2 and 3 of part 1 to this Protocol.
<b>10. New Build Works</b>	The Contractor is to undertake the required new build works for the contract.	<p>The Contractor will log all details of the new build works undertaken on their own systems.</p> <p>As with the refurbishment</p>	Data on all new build works completed will be transferred to the City Council in accordance with Annex 22 of the Output Specification to allow the City Council to	Site data to assist this programme may be required in hard copy or if available electronically to deal with any 'dark ground issues'.

Service	Lead Organisation	Lead Contract System	Information Transfer	Linked Dependency
		works they may seek to use City Council IT System to manage the completion and hand over of the new build programme and will require full user access to the relevant part of the City Council IT System in such case.	update the Keystone Asset Management and Orchard systems.  The Contractor, by using City Council IT System will make use of the existing data transfer facility between different elements of the City Council IT System.	Majority of data either already provided by the City Council or secured by the Contractor as part of procurement process.
<b>11. Stock Condition Surveys</b>	The Contractor will, be responsible for the required stock condition survey service requirements of the contract.	The Contractor will use their own survey process for the initial refurbishment programme, supplemented by the City Council IT System facility to undertake stock condition surveys.	Survey data collected will be transferred to the City Council in accordance with Annex 22 of the Output Specification to allow the City Council to update the City Council IT System  Direct use of the City Council IT System will allow the Contractor to define the survey keeping within City Council	Details of all properties and elements required to be surveyed in accordance with Annex 22 of the Output Specification shall be provided by the City Council, to the extent required, by way of direct use of City Council IT System or by way of data download from City Council IT System, in accordance with

Service	Lead Organisation	Lead Contract System	Information Transfer	Linked Dependency
			requirements and undertake the required uploading of collected data.	paragraphs 2 and 3 of part 1 to this Protocol.
<b>12. Contract Reporting Works</b>	The Contractor will be providing the data required for the reporting of progress against the works programme.	The detailed reports will be provided by Contractor IT Systems.	No information transfer is required to enable delivery of the contract reports	No information transfer is required to enable delivery of the contract reports
<b>13. Contract Reporting Services</b>	The Contractor will be providing the data required for the reporting of progress against the services programme.	The detailed reports will be provided by Contractor IT Systems.	No information transfer is required to enable delivery of the contract reports	No information transfer is required to enable delivery of the contract reports

## **Part 6**

### **DATA PROCESSING**

This section details the requirements for data processing within the contract. All Data required for the purposes of the operation and implementation of the Works and Services will be Data to be controlled by the City Council as Data Controller, whether that data is held on City Council IT Systems or Contractor IT Systems.

#### **Information provision**

The information being processed is all tenant, and property related data required for the provision of the Works and Services by the Data Processor and any extra data deemed reasonably necessary by the Data Controller during the term of the Agreement.

Ownership of the Data shall at all times remain with the City Council as Data Controller.

#### **Use, Disclosure and Publication**

The data will be used solely for the purpose of implementation and operation of the Works and Services.

The Data will NOT be matched with any other Personal Data otherwise obtained from the Data Controller, or any other source, unless specifically authorised in writing by the Data Controller.

The Data will NOT be disclosed to any third party without the written authority of the Data Controller.

Access to the Data will be restricted to those employees of the Data Processor or authorised third parties directly involved in the processing of the Data in pursuance of the Purpose and approved by the Data Controller.

No steps will be taken by the Data Processor to contact any Data Subject identified in the Data other than for the Purpose.

#### **Data Protection**

The use and disclosure of any Personal Data shall be in accordance with the obligations imposed upon the Parties to the Agreement by the Data Protection Act 1998.



The Parties undertake to comply with the provisions of the Data Protection Act 1998 and to notify as required any particulars as may be required to the Information Commissioner.

The receipt by the Data Processor from any Data Subject of a request to access to the Data covered by this Agreement must be reported immediately to the person nominated below representing the Data Controller, who will arrange the relevant response to that request.

If any Party receives a request under the subject access provisions of the Data Protection Act 1998 and personal data is identified as belonging to the other Party, the receiving Party will contact the other Party to determine if the latter wishes to claim an exemption under the provisions of the Data Protection Act.

It is acknowledged that where a Data Controller cannot comply with a request without disclosing information relating to another individual who can be identified from that information, he is not obliged to comply with the request, unless;

- a) the other individual has consented to the disclosure of the information to the person making the request; or
- b) it is reasonable in all the circumstances to comply with the request without the consent of the other individual. In determining whether it is reasonable, regard shall be had, in particular, to:-
  - any duty of confidentiality owed to the other individual;
  - any steps taken by the Data Controller with a view to seeking consent of the other individual;
  - whether the other individual is capable of giving consent;
  - any express refusal of consent by the other individual.

If the Data Controller receives a request for information under the provisions of the Freedom of Information Act 2000 identified as belonging to the Data Processor, the Data Controller will contact the Data Processor to determine whether they want to claim an exemption under the provisions of the Freedom of Information Act 2000.

Where the Data Processor receives a request for information under the provisions of the Freedom of Information Act 2000 in respect of information provided by or relating to the Data Controller, the Data Processor will contact the person nominated below to ascertain whether the Data Controller wishes to claim any exemption including the determination of whether or

not the Data Controller wishes to issue a response neither to confirm nor deny that information is held.

Where any Party receives a Notice under Section 10 of the Data Protection Act 1998, that Party will contact the person nominated below to ascertain whether or not to comply with that Notice.

The Data Processor shall give reasonable assistance as is necessary to the Data Controller in order to enable him to:

- Comply with request for subject access from the Data Subjects;
- Respond to Information Notices served upon him by the Information Commissioner;
- Respond to complaints from Data Subjects;
- Investigate any breach or alleged breach of the Data Protection Act 1998,

in accordance with the statutory obligations under the Data Protection Act 1998.

On reasonable notice, periodic checks may be conducted by the Data Controller to confirm compliance with this Agreement.

### **Confidentiality**

The Data Processor shall not use or divulge or communicate to any person (other than those whose province it is to know the same for the Purpose, or without the prior written authority of the Data Controller) any Data obtained from the Data Controller, which it shall treat as private and confidential and safeguard accordingly.

The Data Processor shall ensure that any individuals involved in the Purpose and to whom Data is disclosed under this Agreement are aware of their responsibilities in connection with the use of that Data.

For the avoidance of doubt, the obligations imposed on the Parties by this Agreement shall continue in full force and effect after the expiry or termination of this Agreement until the Data Processor no longer holds and retains Data relating to the Purpose. Respect for the privacy of individuals will be afforded at all stages of the Purpose.

The above shall not apply where disclosure of the Data is ordered by a Court of competent jurisdiction, or subject to any exemption under the Data Protection Act 1998, where disclosure is required by a law enforcement agency or regulatory body or authority, or is required for the purposes of legal proceedings, in which case the Data Processor shall immediately notify the Data Controller in writing of any such requirement for disclosure of the Data in order to allow the Data Controller to make representations to the person or body making the requirement.

The restrictions above shall cease to apply to any Data which may come into the public domain otherwise than through unauthorised disclosure by the Parties to the Agreement.

### **Retention, Review and Deletion.**

The Data Processor will retain the data for the period of the Head Agreement or a period not to exceed 6 years of the termination of the Purpose, whichever is the shorter. Data shall, wherever possible, be securely deleted from all physical and electronic storage media. The Data Controller will be notified in writing that this has been undertaken.

### **Security**

The Data Processor recognises that the Data Controller has obligations relating to the security of Data in his control under the Data Protection Act 1998. The Data Processor will continue to apply those relevant obligations as detailed below on behalf of the Data Controller during the term of this Agreement.

The Data Processor agrees to apply appropriate security measures, commensurate with the requirements of principle 7 of the Data Protection Act 1998 to the Data, which states that: “appropriate technical and organisation measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data”. In particular, the Data Processor shall ensure that measures are in place to do everything reasonable to:

- make accidental compromise or damage unlikely during storage, handling, use, processing transmission or transport
- deter deliberate compromise or opportunist attack, and
- promote discretion in order to avoid unauthorised access

**During the term of this Agreement, the Project Manager shall carry out any checks as are reasonably necessary to ensure that the above arrangements are not compromised.**

The Data Controller may wish to undertake suitability checks on any persons having access to council premises and the Data and further reserves the right to issue instructions that particular individuals shall not be able to participate in the Project without reasons being given for this decision. The Data Processor will ensure that each person who will participate in the Purpose understands this and provides their written consent as necessary.

The Data Processor will ensure that Personal Data accessed is not used other than as identified within this Agreement, and that the Agreement is complied with.

The Data Processor will carry out periodic security tests to ensure confidence in the physical and logical integrity of the Data and their systems and provide assurance to the Data Controller.

The Data Controller reserves the right to undertake a review of security provided by any Data Processor and may request reasonable access during normal working hours to the Data Processor premises for this purpose. Failure to provide sufficient guarantees in respect of adequate security measures will result in the termination of this Agreement.

Access to the Data will be confined to authorised persons only. These will be the individuals identified and agreed between the Data Controller and Data Processor.

I



































































































































## **APPENDIX 3**

### **Form of Tenancy Agreement**

TENANCY AGREEMENT

This is a legal document. It describes the rights and responsibilities of Leeds City Council and of you, the tenant

The address of the property rented in this Agreement is

\_\_\_\_\_

The name of the tenant(s) is/are

National Insurance No

1		
2		

This weekly tenancy starts on \_\_\_\_\_

It is an Introductory Tenancy until \_\_\_\_\_ When you will become a Secure Tenant if we decide your tenancy should continue

Net Rent	£
Central Heating	£
Other Charges (specify)	£
Weekly amount payable (over 48 weeks per year)	£

(Your Neighbourhood Housing Office may be able to tell you about claiming Housing Benefit to help with your rent payments)

If there is anything you do not understand please ask a Housing Officer. You can get help from a Citizen's Advice Bureau or Law Centre. Joint tenants should make a special note of Sections 2.3 and 2.54

**All tenants and trustees of any tenants who are under the age of 18 should sign below after reading this Agreement**

The information I (or we) gave in the housing application form was and still is true  
I (or we) have been given a copy of the 'Welcome to your Introductory Tenancy' leaflet  
I (or we) understand and agree to the conditions in this tenancy agreement

Tenants Signature

1	
2	

Signed on behalf of the tenant by \_\_\_\_\_ (insert name)  
\_\_\_\_\_ (address)

As trustee being a responsible person over the age of 18

Dated

Housing Officer \_\_\_\_\_ Neighbourhood Housing Office

Reference \_\_\_\_\_ Dated \_\_\_\_\_





Fifth Edition

June 2008

# Tenancy Agreement

The ALMOs are limited companies wholly owned by Leeds City Council

Dear Tenant

I would like to welcome you to your new Leeds City Council home.

Your tenancy agreement and this booklet outline your rights and responsibilities as a tenant and those of Leeds City Council as a landlord. Your tenancy agreement is a legally binding contract between yourself and Leeds City Council.

The agreement will enable you to live in peace and comfort in your home and the Council to take effective action against tenants who break the terms of the agreement.

May I take this opportunity to wish you long and happy stay as a tenant of Leeds City Council.

Neil Evans

Director  
Department of Neighbourhoods and Housing

This form is available in large print.  
Please contact Your Local Housing Office.

**English**

If you would like this document in another language, please contact your local Housing office or One Stop Centre.

**French**

Si vous souhaitez recevoir ce document en français, veuillez contacter votre Bureau de Logement local ou votre Centre d'Accueil.

**Albanian**

Në qoftë se ky dokument kërkohet në gjuhën shqipe, ju lutem kontaktoni Zyrtëri e Strehimit të rajonit tuaj ose qendrën "One Stop".

**Hindi**

यदि आप यह दस्तावेज़ हिंदी में लेना चाहें, तो कृपया अपने स्थानीय आवास कार्यालय या वन स्टॉप सेंटर से संपर्क करें।

**Arabic**

إذا أردت هذا المستند باللغة العربية، الرجاء الاتصال بمكتب الإسكان المحلي أو بمركز الخدمة الشاملة.

**Kurdish**

ههنگه که تان بێهێوێ ئێهێh

**Bengali**

আপনি যদি এই নথিটি বাংলা ভাষায় পেতে চান তাহলে দয়া করে আপনার স্থানীয় বাসিন্দা পরিষদ অফিস বা ওন স্টপ সেন্টার থেকে যোগাযোগ করুন।

**Polish**

Jśli chcesz przeczytać ten dokument po polsku, prosimy o kontakt z lokalnym biurom Housing Office lub One Stop Centre.

**Cantonese**

如欲閱取本文件的中文版本，請聯絡你的地區房屋辦事處 (Housing Office) 或一站式中心 (One Stop Centre)。

**Portuguese**

Se quiser este documento em Português, por favor contacte o Housing Office ou o One Stop Centre da sua área.

**Chinese**

如需協助填寫這份表格者  
請前往該區房屋服務辦事處求助

**Punjabi**

ਜੇਕਰ ਤੁਸੀਂ ਇਸ ਦਸਤਾਵੇਜ਼ ਨੂੰ ਪੰਜਾਬੀ ਵਿੱਚ ਪੜ੍ਹਨਾ ਚਾਹੁੰਦੇ ਹੋ ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ ਆਪਣੇ ਸਥਾਨਕ ਆਵਾਸ ਕਾਰਜ ਅਫ਼ਸ ਜਾਂ ਵਨ ਸਟੋਪ ਸੈਂਟਰ ਨਾਲ ਸੰਪਰਕ ਕਰੋ।

**Farsi**

اگر شما نیاز دارید که این فرم را به زبان فارسی داشته باشید، لطفاً با اداره سازمان مسکن یا مرکز وان استاپ (One Stop) محلی خود تماس بگیرید.

**Urdu**

اگر آپ یہ دستاویز اپنی زبان میں چاہتے ہیں تو ایسے مقامی ہاؤسنگ آفس سے یا ون سٹاپ سینٹر سے رابطہ قائم کریں۔

## 1. ABOUT YOUR TENANCY AGREEMENT

- 1.1 **There are two main types of Council tenancy.**
- 1.2 They are:
  - an **introductory** tenancy
  - a **secure** tenancy
- 1.3 As an introductory tenant you have **fewer legal rights** than a secure tenant.
- 1.4 If you are an introductory tenant, the section on the front of the Agreement will be completed showing when the introductory tenancy will end if there are no breaches of this Agreement.
- 1.5 If you are transferring to a property from another Leeds City Council property as a secure tenant or if you are transferring as an assured tenant of a registered social landlord such as a Housing Association your tenancy will be secure straight away. You will not have to be an introductory tenant.
- 1.6 Your introductory tenancy is a **trial period**. You must show us that you are responsible enough to keep the property. To do this you must:
  - **not behave anti-socially, cause a nuisance or harass other people; and**
  - **pay your rent on time; and**
  - **look after the property.**
- 1.7 As an introductory tenant you can be evicted much more quickly and more easily than a secure tenant.

If you do not comply with the terms of your Introductory Tenancy, the council has the right to extend an Introductory Tenancy by an additional six months. Before taking this action, the Council must advise you of its intention and give you the right to request a review of the decision to extend your Introductory Tenancy.

The Council can also apply to the court for an eviction order. The Council must tell you why it is evicting you and give you the right to request a review of the decision, but we do not need to prove in court that it is reasonable to evict you.

If we have not taken any action that could lead to the extension of your introductory tenancy or possession of your home, you will automatically become a secure tenant on the date written on your tenancy agreement.

- 1.8 If you become a **secure tenant**, you must still behave responsibly and keep to the rules of this Agreement – but if we want to take possession of the property you would have the right to put your case at a court hearing. The council also has the right to demote your Secure Tenancy to a tenancy with fewer rights. A judge would then decide if we could evict you or demote your tenancy. We would have to show that we have a valid reason to evict you or demote your tenancy. These are called 'grounds' and are defined by law. Before going to Court we would have to serve you with a Notice of Intention to Seek Possession or a Notice of Intention to Demote your tenancy setting out our reasons for serving the Notice.

Introductory Tenants DO NOT have this right. You get this right if you become a secure tenant.

- 1.9 You do **not** have some of the **rights** in this Agreement during your introductory tenancy. You will get these rights if you become a secure tenant. Rights which apply only to secure tenants are marked like this:

Introductory Tenants ONLY  
This does not apply when you become a secure tenant.

- 1.10 You have an extra **responsibility** during your introductory tenancy. You do not have this responsibility if you become a secure tenant. It is marked like this:

- 1.11 Any tenancy given to someone under the age of 18 is conditional upon a responsible person signing this Agreement on their behalf as trustee. That person accepts that any Notices or demands for payment served under this Agreement can be served on the trustee until the tenant reaches the age of 18.
- 1.12 **Make sure you have read and understood the leaflet "Welcome To Your Introductory Tenancy". It describes the procedure we have to go through if we want to evict you. Ask at your Neighbourhood Housing Office if you have not seen a copy.**
- 1.13 Some of the rights and responsibilities of the Council under this Agreement may be exercised or provided by other agencies on behalf of the Council. Those agencies may enforce this agreement on the Council's behalf including recovery of any payments due.

## 2. TENANT'S RESPONSIBILITIES

### 2A YOUR RENT

- 2.1 You must pay your rent and any other charges for the property. They must be paid on time. Your rent is due on Monday but you can pay in advance every two weeks or every month if you prefer.

However you choose to pay, you must make sure that your account is clear at the end of each week.

If you believe that you may be entitled to Housing Benefit, it is your responsibility to claim Housing Benefit. You must ensure that you provide all the information requested to process your claim.

Please ask at your Neighbourhood Housing Office about the different ways in which your rent and other charges can be paid, eg by direct debit or standing order. You can also pay at post offices in some areas.

We calculate the rent due for a year (52 weeks) and divide that by 48. If you keep your rent up to date we will ask you to pay on 48 out of 52 weeks each year. This means that there are some weeks when you do not need to pay rent. We will tell you which weeks these are.

If your account is in arrears, you must pay on these weeks as well so that your arrears can be reduced.

If any money is to be paid to you by your landlord, for example, as compensation for damage to your property or decorations or for home loss and disturbance, the Council reserves the right to pay that money onto your rent account if you are in arrears.

- 2.2 If you do not pay your rent, or persistently pay it late, the council can go to court to get legal permission to evict you from the property. The Council can also seek a County Court Judgement for the rent and enforce that through the Court. If you have any difficulty paying your rent, contact your Neighbourhood Housing Office immediately.

We reserve the right to raise charges for letters and visits needed because your account is in arrears. No charge will be made for a first letter but details of further charges if your account is not cleared will be set out in the letter. Any charges made will be added to your rent account.

We will consult with tenants and tenants' groups before we introduce charges and will give at least 6 weeks' notice of our intention to do so including a copy of any scale of charges.

- 2.3 If you are **joint tenants** you are each responsible for all the rent and other charges and for any arrears. The Council can recover all rent, other charges and any arrears owed for your home from any individual joint tenant. The Council always has the choice of which of the joint tenants it pursues for any sums due.
- 2.4 The rent may be increased or decreased from time to time – usually in April. You will be told in writing at least four weeks before any rent change.
- 2.5 Some tenants pay for services provided with the tenancy with an extra charge paid with their rent. You will be told about this if you are one of these tenants. If you **do** have a tenancy like this, a breakdown of the charges is shown on page 1 of this Agreement. There may also be extra terms that apply to your tenancy. These will be attached to the back of your Agreement.

This would apply if for example you had a furnished tenancy or were in the heat lease scheme.

We will tell you in writing, at least four weeks before any change to these charges.

- 2.6 We have the right to offer additional services for which you will have to pay for as part of your rent. We will tell you, in writing, at least four weeks before we do this. Tenants will be consulted before new services are introduced.

## **2B ACCESS TO THE PROPERTY**

- 2.7 **You must allow the Council access to the property at reasonable written notice** (usually 24 hours) for the following purposes:
- a) to carry out repairs or other necessary works or safety checks whether or not the Council has, or has assumed, responsibility for such works, or
  - b) to carry out repairs or other necessary works to common areas (such as stairs, lifts, landings, walkways, entrance halls, drying

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areas, bin stores, paved areas, shared gardens or parking areas) or neighbouring properties owned by the Council.

- c) to carry out annual gas safety checks, or
- d) to inspect the condition of the property, or
- e) to allow prospective tenants to view the property during the final 28 days of your tenancy when you have served a notice of termination or during the 28 days immediately prior to the expiry of any Notice of Intention to Seek Possession served upon you, or
- f) for constructing, installing, inspecting, repairing, renewing, maintaining and removing pipes, conduits, wires and cables. Access for this purpose must also be given to statutory undertakers (such as British Gas, Transco and Yorkshire Water).

**In cases of emergency** such as gas, water or sewage leaks or where buildings or electrics are unsafe **you agree** that the Council can enter the property without giving you written notice, and whether you are there or not, in order to inspect the property and carry out any repairs required to deal with the emergency.

If you do not let us have access you could be putting yourselves and your neighbours at risk. We can take legal action to enter the property and you may have to pay the costs, or you may be prosecuted for obstruction.

Never let anyone in without first seeing some official identification. (If you are in doubt contact your Neighbourhood Housing Office during office hours or the emergency number at other times – these numbers are on your rent card).

## 2C USING THE PROPERTY

Introductory  
Tenants ONLY  
This does not  
apply when you  
become a  
secure tenant.

- 2.8 If you want someone to stay who was not part of your household when you first moved in (temporarily or permanently) you must get the Council's written permission first. This includes children, relatives, friends and guests. We will not refuse permission unless there is a good reason (such as the person being likely to cause a nuisance or overcrowding).

2.9 **You must** use the property as your only or principal home. If you don't use the property as your only or principal home, we will take action to end your tenancy.

2.10 **You must** tell your Neighbourhood Housing Office in writing if you will be away from home for more than 28 days. (This is so we know that you have not abandoned your home).

**You agree** that the Council can enter the premises (whether or not you have been away from home for 28 days or more) where it reasonably appears that you have abandoned the premises.

**You also agree** that if following inspection of the premises it still appears to the Council that you have abandoned the premises, the Council may change the locks and take any other appropriate steps to protect the premises and may dispose of all personal property found in the premises in accordance with the Torts (Interference with Goods) Act 1977.

**You also agree** that the Council will recharge you with the reasonable cost of changing the locks, making the premises safe and disposing of any personal property found in the premises.

**You also agree** that you will accept any liability to any other person for the loss of any property belonging to such a person and disposed of by the Council following your abandonment.

2.11 **You must not** tamper with gas or electricity supplies or with meters.

2.12 **You must not** allow the property to become overcrowded. If you are unsure about this, ask at your Neighbourhood Housing Office for advice.

2.13 **You must not** keep mopeds or motorbikes inside the property or in indoor communal areas (such as stairs, lifts, landings, walkways, entrance halls or indoor drying areas). If you wish to keep a mobility aid such as a scooter or motorised wheelchair you must get written permission first. This will normally be granted.

2.14 **You or anyone living with you or visiting the property must not** run a business from the property without getting the Council's written permission first. We will not normally refuse permission unless the business would cause a nuisance or annoyance or might damage the property.



2.15 **You agree** that any reasonable costs or liability incurred by the Council as a consequence of your breach or failure to perform any part of this Agreement will be repayable in full upon your receipt of an invoice from the Council. You also agree that the City Council can use any money at any time due from the Council to the tenant towards discharging your liability under this section.

Those things for which the Council will recharge include:

- rectifying any work to the premises that you have carried out without the necessary written permission of the City Council;
- rectifying damage caused by your failure to comply with your repairing duties or failure to maintain your own equipment;
- changing the locks of and otherwise securing the premises if left abandoned by you;
- your abuse of the emergency repair service for non-emergency repairs;
- replacing missing or broken keys.

## 2D COMMUNITY RESPONSIBILITIES

2.16 **You are responsible** for the behaviour of every person (including children) living in or visiting the property. You are responsible in the property, on surrounding land, in communal areas (such as stairs, lifts, landings, walkways, entrance halls, drying areas, bin stores, paved areas, shared gardens or parking areas) and in the locality around the property including shopping centres, bus shelters, and other public areas.

2.17 **You** (or anyone living with you or visiting the property) **must not** act in any way which is anti social or which is, or is likely to cause a nuisance to any other person. Nuisance includes behaviour that is harmful, offensive, annoying, disagreeable or interferes with the quiet enjoyment of any other person. Examples of nuisance include:

- noise nuisance such as loud music, loud televisions, shouting or arguing, banging doors, burglar alarms, DIY work;
- dog barking or fouling or allowing your dog to cause a nuisance or annoyance to others in the locality;
- offensive drunkenness;

- selling or possession of drugs, drug abuse and leaving drug related litter and needles;
- use of premises for unlawful activity;
- rubbish dumping;
- excessive vehicle repairs and noise and debris arising from vehicle repairs;
- storing scrap;
- playing ball games in the streets or close to someone else's home in a way which causes or is likely to cause a nuisance.

This list is not exhaustive.

2.18 **You** (or anyone else living with you or anyone visiting the property) **must not** harass any other person. Examples of harassment include:

- Using racist or homophobic behaviour or language;
- using or threatening to use violence;
- using abusive or insulting words;
- damaging or threatening to damage another person's home or possessions;
- causing damage to another person's property by writing any graffiti;
- engaging in public disorder;
- doing anything that interferes with the peace, comfort or convenience of other people.

2.19 **You** (or anyone living with you or anyone visiting the property) **must not** make false or malicious complaints about the behaviour of any other person.

2.20 **You** (or anyone living with you or anyone visiting the property) **must not** use the property or any communal area (such as stairs, lifts, landings, walkways, entrance halls, drying areas, bin stores, paved areas, shared gardens or parking areas) for any illegal activity such as selling drugs, burglary or theft from any premises or of any vehicle or property.

2.21 **You** (or anyone living with you or anyone visiting the property) **must not** damage, deface or put graffiti on Council property. You will have to pay for any repair or replacement.

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- 2.22 **You** (or anyone living with you or anyone visiting the property) **must not** interfere with security or safety equipment in multi-storey flats or communal blocks of flats or maisonettes or sheltered housing complexes. You must not jam, prop or leave shared entrance doors open and strangers should not be let in without identification. You must co-operate with security staff.
- 2.23 **You** (or anyone living with you or anyone visiting the property) **must not** break any of the Councils byelaws. You can ask to see the byelaws at a public library.
- 2.24 **You** (or anyone living with you or anyone visiting the property) **must not** inflict domestic violence or threaten violence against any other person (living with you or living elsewhere). You (or anyone living with you or visiting the property) must not harass or use mental, emotional, racist or sexual abuse to make anyone who lives with you leave the property. The Council may still take action for domestic violence even if a case does not go to court.
- 2.25 **You** (or anyone living with your or visiting the property) **must not** keep any animal in or near the property except if this is permitted by Council Policy on Pets in Council Houses. You must not keep any illegal animals. Even if the Policy allows you to keep an animal you must not allow it to annoy or frighten other people and you must keep your animal in a responsible manner and under control. It must not damage Council property.

Please ask at your Neighbourhood Housing Office for details of the policy.

- 2.26 **You** must ensure that you co-operate with any support provider(s) to enable you to maintain your tenancy.
- 2.27 **You** (or anyone living with you or visiting the property) **must** co-operate with the Council and your neighbours to keep any communal areas (such as stairs, lifts, landings, walkways, entrance halls, drying areas, bin stores, paved areas, shared gardens or parking areas) clean, tidy and clear of obstruction.
- 2.28 **You** (or anyone living with you or visiting the property) **must not** drop or throw any items from multi-storey blocks of flats, maisonettes or any other premises.

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- 2.29 **You** (or anyone living with you or visiting the property) **must not** park a vehicle anywhere on your property except on a 'hardstanding' (a driveway or paved area intended for parking). You must get the Council's written permission before installing a hardstanding. We will not refuse permission unless there is a good reason.

Caravans or motor homes must not be parked on the garden, driveway, paved area around your home or any communal parking areas without the Council's prior agreement in writing. We will not refuse permission unless there is a good reason. You (or anyone living with you or visiting your home) must not park anywhere that would obstruct emergency services.

- 2.30 If the property has a designated resident's parking space, only you and your legitimate visitors can park there. **You must not** rent or sell the parking space to anyone else.

- 2.31 **You** (or anyone living with you or anyone visiting the property) **must not** undertake car repairs in a manner which causes a nuisance to your neighbours or park an illegal or unroadworthy vehicle on the land around the property or on roads within the locality of the property.

- 2.32 **You** (or anyone living with you or visiting the property) **must not** allow the premises to be used as a scrap yard, scrap metal or rubbish store, vehicle store or tyre store.

- 2.33 **You** (or anyone living with you or visiting the property) **must not** put up structures such as sheds, garages or pigeon lofts anywhere on the property without getting the Council's written permission first. Permission will not be unreasonably withheld.

- 2.34 **You must** make sure your garden is tidy. For example lawns must be cut and hedges trimmed. If the garden is overgrown – and there is no good reason why you cannot do it – the Council can clear it and charge you for the work. You must get the Council's written permission before removing any fencing. We will not refuse permission unless there is a good reason.

- 2.35 **You** (or anyone living with you or anyone visiting the property) **must not** keep or use bottled gas, paraffin, petrol or any other dangerous material in your home or in communal areas (such as stairs, lifts, landings,

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walkways, entrance halls, drying areas, bin stores, paved areas, shared gardens or parking areas) unless the material is kept safely in suitable storage facilities.

- 2.36 **You must** only put household refuse in containers or chutes provided by the council or in bin bags. You must not allow rubbish to accumulate in the property or any garden or communal areas whether or not it is in bin bags. You must not place non recyclable materials in recycling bins.
- 2.37 **You must** not paint the exterior of the property or apply any exterior finish such as render without first obtaining the Council's written permission.

## 2E REPAIRS AND IMPROVEMENTS

- 2.38 **You must** report any disrepair or damage immediately to your Neighbourhood Housing Office. Make sure you get or are sent a written confirmation saying that we have got your request for a repair **and that you keep the confirmation in case you want to make an enquiry later.**

**If you do not get confirmation or you are not happy about the repairs we say we will or will not do you should complain in writing to your Neighbourhood Housing Manager under the Council's complaints procedure.**

**The Council will seek to use independent mediation services to deal with disputes between it and its tenants about repairs, which cannot be resolved by using the Council's complaints procedure. Tenants are strongly encouraged to use this service as it aims to be quicker, less costly and more informal than litigation.**

- 2.39 If the problem you report comes under the Council's responsibilities we will carry out the repairs. If it does not we will give you the opportunity to do the repair within a reasonable time. If you do not carry out the repair **we can carry it out and charge you for the cost of doing it.**
- 2.40 **You are responsible** for small repairs like the filling of minor cracks in internal plasterwork including preparatory work for redecoration; lock changes when keys are lost; replacing lost or broken keys; replacing fuses and electric plugs; replacing plugs and chains to sanitary ware; and replacing clothes lines.

**If you are not sure what is your responsibility, ask at your**

### **Neighbourhood Housing Office.**

- 2.41 **You must** allow Council workers or people sent by the Council into the property to inspect or carry out repairs. See Section 2.7 for details of when the Council is entitled to access to the property.
- 2.42 **You must not** make improvements, additions or structural alterations to the property without getting the Council's written permission first. See section 3.3 for details of a tenant's right to make improvements. We will not refuse permission unless there is a good reason.

You must not make any installations which may be unsafe or dangerous to anyone. This might include deep ponds or earth removal.

If you make an improvement, additions or structural alteration to the property without getting our written permission first we can tell you to return the property to how it was before or to do works to a satisfactory standard or to do works to make the property safe. If you do not, the Council will do the work and charge you for it.

**You must not** make any improvements, additions or structural alterations to communal areas (such as stairs, lifts, landings, walkways, entrance halls, drying areas, bin stores, paved areas, shared gardens or parking areas).

- 2.43 The Council does not insure the contents of the property. You are advised to arrange adequate householder's comprehensive insurance cover to protect your possessions. **The Council operates a low cost insurance scheme for which you can pay an extra charge with your rent.** If you wish to join this scheme please ask at your Neighbourhood Housing Office.
- 2.44 The Council will not be responsible for any damage to your property including decorations or loss from the property which happens through fire, flood, theft, burst pipes or similar events, unless it can be shown that this is caused by the Council's negligence, breach of contract or breach of statutory duty. (Note this does not affect the Council's duties to repair set out in Clause 4.3 and you may have a claim if these duties are not kept to).

## 2F LEAVING THE PROPERTY AND ENDING YOUR TENANCY

- 2.45 **You must** tell your Neighbourhood Housing Office in writing at least four weeks before you want to leave the property. This four-week “notice” time must end on a Monday and you must return your keys to the Neighbourhood Housing Office before 12 o'clock midday on that final Monday. You may hand your keys in before the “notice” expires but you may be charged rent for the whole period.
- 2.46 **You agree** that the Neighbourhood Housing Office may accept the keys from some other person where it reasonably appears that the other person is returning the keys on your behalf.
- 2.47 **If you leave the property after giving notice and fail to return the keys the Council will change the locks and recharge the cost to you.**
- 2.48 **You will be responsible for paying the rent or a sum equivalent to rent until whichever of the following dates is the latest:**
- the date upon which any notice to terminate expires, or
  - the date upon which you leave the property, or
  - (in the event of you failing to give written notice or to return the keys) the date upon which the Council takes possession.
- 2.49 **You must** leave the property, the fixtures and fittings and any furnishings we have provided in reasonable condition when you go. **Do not leave any of your belongings or any rubbish behind – the Council will dispose of them in accordance with the Torts (Interference with Goods) Act 1977 and you will be charged for the reasonable cost of disposal.**
- 2.50 **You must** pay your rent in full before you leave. If you cannot clear your rent in full you must ensure that you leave a forwarding address and make an arrangement to pay the balance.
- 2.51 **You must not** leave anybody else living in the property when you move out.

Introductory Tenants ONLY  
This does not apply when  
you become a secure tenant.

- 2.52 You must not attempt to pass on your tenancy (called “assignment”) to anyone else.

- 2.53 If you are evicted; or abandon the property; or still owe rent or other charges or money for any other payment due under this Agreement when you move out this may affect how quickly you will be given another Council property in the future.
- 2.54 If you take up another Council tenancy and you still owe money from a previous tenancy you agree that those arrears can be transferred from your previous tenancy onto your current consolidated rent account and you will be expected to clear those arrears in addition to payments of current rent. This applies whether you move directly from one tenancy to another (transfer) or whether you left the first property some time ago.
- 2.55 If you are **joint tenants** any one of you can end the tenancy by giving the Council four weeks' notice. That notice will end the tenancy of both/all joint tenants. The Council will then use its lettings policy to decide if the other joint tenant(s) can stay in the property with a new tenancy agreement. There is no automatic right for the other joint tenants to stay in the property.

## 3. TENANT'S RIGHTS

### 3A USING THE PROPERTY

Introductory Tenants DO NOT have this right. You get this right if you become a secure tenant.

- 3.1 **You have the right** to take in lodgers. A lodger is someone who lives with you but does not have any exclusive right to any one part of the property, and they will receive some sort of service from you such as cooking and cleaning.

Introductory Tenants DO NOT have this right. You get this right if you become a secure tenant.

- 3.2 **You have the right** to sub-let, but you must get the Council's written permission first. Consent will not be unreasonably withheld. Sub-letting means that someone who lives with you pays you rent to have an exclusive right to occupy part of the property. They will usually do their own cooking and cleaning. You cannot sub-let the whole of the property under any circumstances.

You are advised to obtain legal advice before sub-letting the property or taking in lodgers.



## 3B REPAIRS AND IMPROVEMENTS

Introductory Tenants DO NOT have this right. You get this right if you become a secure tenant.

- 3.3 **You have the right** to put in your own improvements such as central heating, a shower or a gas fire, **but** you must get the Council's written permission first before doing any work like this. We will not refuse permission unless there is a good reason. (You may also need planning and building regulation approval and you must ensure that any work is carried out by a competent person who must comply with all relevant rules and regulations.)
- 3.4 **You will be responsible** for repair and maintenance of any installations, appliances or materials in the property following your own improvements but if for any reason the Council needs or chooses to take steps to repair, maintain or inspect your improvements the costs incurred will be recharged to you. For example, it will be our legal responsibility to check, service and maintain gas fires and heaters, pipework and flues even if they have been fitted by you.

## 3C LEAVING THE PROPERTY AND ENDING YOUR TENANCY

- 3.5 **The law** says that if you die, the tenancy of the property will pass to your husband, wife or civil partner. It can pass to a member of your family (person living with you as husband, wife or civil partner, parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece) if the family member/s has been living with you for the previous twelve months.
- 3.6 If you die while you are still an **introductory** tenant, any person who takes over your tenancy will also be an introductory tenant. They will become a secure tenant on the date shown on the front of this Agreement. If you die when you are a **secure** tenant, the person who takes over your tenancy will be a secure tenant immediately.
- 3.7 If you have taken over the tenancy following the death of the previous tenant the tenancy does not go to someone else if you die. We **may** agree to give them a **new** tenancy under our Letting Policy and allow them to stay in the property but there is no automatic right to stay.

- 3.8 If the tenancy passes to a member of your family and the home is bigger than they need this is one of the grounds for possession. We will offer them a suitable alternative property. If they do not accept that offer we have the right to ask the Court to give us possession of the property.

Introductory Tenants DO NOT have this right. You get this right if you become a secure tenant.

- 3.9 **The law says that certain secure tenants have the right** to buy their homes if they have been tenants of a council or any other public sector landlord (eg housing associations), or lived in armed forces accommodation, for a qualifying period. The length of the qualifying period will depend on the date the tenancy started (it does not need to have been a continuous period), and what the law prescribes. There are some cases in which there will be no right to buy, for example if the property has been adapted for elderly or disabled people.

Introductory Tenants DO NOT have this right. You get this right if you become a secure tenant.

- 3.10 You have the right to pass your tenancy to another person (called an Assignment). Certain conditions apply to this right. Generally you can only pass your tenancy in this way to someone who would have the right to take over your tenancy if you died (succession). Please ask your Neighbourhood Housing Office for more details.

### 3D MOVING TO ANOTHER COUNCIL PROPERTY

- 3.11 **If you** move to another Council property you will have to complete an application and comply with the Council's lettings policy. Whether and when you receive an offer of a new property depends on various matters including the urgency of your housing need and what accommodation is available. If your tenancy in your new property starts before your tenancy of your old property has ended, you will be responsible for the rent on both properties until your old tenancy ends.

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- 3.12 **You have the right** to see our policy for deciding who gets offered a council property. You also have the right for a free copy of a short summary of these rules. Ask at your Neighbourhood Housing Office.
- 3.13 **You have the right** to swap your property (called an “exchange”) with another tenant of the Council, a housing association or another local council, but you must get the Council’s written permission first and the written agreement of any other landlord involved.

The Council can refuse permission or impose conditions on an exchange only in certain circumstances. Ask at your Neighbourhood Housing Office for further details.

**If you exchange without our written permission we will take legal action to evict you. You will not be able to return to your original property and will not be offered alternative housing.**

### 3E TENANT INVOLVEMENT

- 3.14 **You have the right** to start or join a local tenants’ group. Ask at your Neighbourhood Housing Office for information about groups in your area or about how to start one.

## 4. COUNCIL’S RESPONSIBILITIES

### 4A COMMUNITY RESPONSIBILITIES

- 4.1 **Everyone has the right to enjoy life in their own way providing they do not upset people living near them. A good neighbour will tolerate and understand the different lifestyles of others. There will be occasions when the Council will decide to take action to evict tenants because of anti-social behaviour. If you are evicted for anti social behaviour or other action is taken against you this may affect your chances of being rehoused by the Council. Please see our Lettings Policy for details.**

- 4.2 **We will** give you, and anyone living with you, help and advice on how to report anti-social behaviour.

## 4B REPAIRS AND IMPROVEMENTS

- 4.3 **We will** repair and maintain:
- the structure and exterior of the property (including drains, gutters, external pipes and external decoration);
  - the installations in the property for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences but not other fixtures, fittings and equipment for making use of the supply of water, gas or electricity);
  - the installations in the property for space heating and heating water.
- 4.4 **We will** paint the outside of the property at regular intervals. We are not responsible for decorating the inside of the property.
- 4.5 **We will** do repairs in a reasonable time. We will give you or send to you written confirmation of your request for a repair (unless it is an emergency). You should keep this confirmation in case you want to make an enquiry later.
- 4.6 **We will** clear up after a repair. In some cases a decoration grant may be available to assist with the cost of redecoration. Ask at your Neighbourhood Housing Office for details.
- 4.7 **We can** ask a Judge to give us possession of the property because work needs to be done to it. This includes cases where you or a person residing in the property has caused the condition of the property to deteriorate or where we need to carry out major repairs or redevelop or demolish the property. In some cases you will be entitled to temporary accommodation while work is carried out or you may be entitled to an offer of alternative permanent accommodation.
- 4.8 **If you agree to a temporary move we have the right to take possession of your temporary property when the work on your original property is finished.**

## 4C TENANT INVOLVEMENT

- 4.9 **We will** ask your views about any of the Council's housing plans if they substantially affect you – for example we will consult you about modernisation or improvement work that is planned for the property or your area. We will involve you or your tenants' group in local housing issues.
- 4.10 **We will** send you a special housing report every year that describes our work and performance. It will tell you how the service is paid for and how your money is spent.
- 4.11 **We will** deal with your complaints efficiently and effectively. If you need to make a complaint contact your Neighbourhood Housing Office.
- 4.12 We do not have to consult you about increases or decreases to the rent or any other charges but we will tell you in writing at least four weeks before any rent or any other charges are changed.
- 4.13 We will ask your views about any other changes to this Agreement and you will be told in writing if such changes are to go ahead.

## 5. SERVICE OF NOTICES

- 5.1 Pursuant to Section 48(1) of the Landlord and Tenant Act 1987 the City Council notifies you that its address for service is the Director of Department of Environment and Neighbourhoods, Merrion House, 110 Merrion Centre, Leeds LS2 8BB.
- 5.2 Pursuant to Section 196 Law of Property Act 1925 any Notice required by law to be served on the Tenant or Occupier shall be validly served if it is left at the address shown on the front of this Agreement or if it is posted to that address and not returned by the Post Office.

## 6. ADVICE

If you wish to discuss this Agreement with a representative to the Department of Environment and Neighbourhoods you should contact your Neighbourhood Housing Office or The Housing and Advice Centre.

A translation of the Agreement is available in the following languages

**Albanian, Arabic, Bengali, Cantonese, Chinese, Farsi, French, Polish, Hindi, Kurdish, Portuguese, Punjabi, Urdu**

This can also be made available in large print and braille.

Information leaflets are also available regarding this Agreement.

**By keeping to this Agreement, you will help the Department of Environment and Neighbourhoods to meet its vision to create better neighbourhoods and healthier communities.**

## **APPENDIX 4**

### **Form of Leasehold Leases**

<b>LR1. Date of Lease</b>	
<b>LR2. Title Number(s)</b>	<p><b>LR2.1 Landlord's title number(s)</b></p> <p>Title number(s) out of which this lease is granted. Leave blank if not registered.</p> <p><b>LR2.2 Other title numbers</b></p> <p>Existing title number(s) against which entries of matters referred to in LR9, LR10, LR11 and LR13 are to be made</p>
<p><b>LR3. Parties to this lease</b></p> <p>Give the full names, addresses of each of the parties.</p>	<p><b>Landlord</b></p> <p>LEEDS CITY COUNCIL Civic Hall, Leeds, LS1 1UR</p> <p><b>Tenant</b></p>
<p><b>LR4. Property</b></p> <p>Insert a full description of the land being leased</p> <p>Or</p> <p>Refer to the clause, schedule or paragraph of a schedule in this lease in which the land being leased is more fully described.</p> <p>Where there is a letting of part of a registered title, a plan must be attached to this lease and any floor levels must be specified.</p>	<p>As set out in Part IV of the Fourth Schedule.</p> <p>In the case of a conflict between this clause and the remainder of this Lease, then, for the purposes of registration, this clause shall prevail.</p>
<p><b>LR5. Prescribed Statements etc</b></p> <p>If this lease includes a statement falling within LR5.1 insert under that sub-clause the relevant statement or refer to the clause, schedule or paragraph of a schedule in this lease which contains the statement.</p> <p>In LR5.2 omit or delete those Acts which do not apply to this lease.</p>	<p><b>LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.</b></p> <p>None</p> <p><b>LR5.2 This lease is made under, or by reference to provisions of:</b></p> <p>Housing Act 1985 and Housing Act 1988</p>



<p><b>LR6. Term for which the Property is leased</b></p> <p>Include only the appropriate statement (duly completed) from the three options.</p> <p>NOTE: The information you provide, or refer to, here will be used as part of the particulars to identify the lease under rule 6 of the Land Registration Rules 2003</p>	<p>The term as specified in this lease at Clause 1</p>
<p><b>LR7. Premium</b></p> <p>Specify the total premium, inclusive of any VAT where payable.</p>	<p>£</p>
<p><b>LR8. Prohibitions or restrictions on disposing of this lease</b></p> <p>Include whichever of the two statements is appropriate.</p> <p>Do not set out here the wording of the provision.</p>	<p>This lease contains a provision that prohibits or restricts dispositions.</p>
<p><b>LR9. Rights of acquisition etc</b></p> <p>Insert the relevant provisions in the sub-clauses or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</p>	<p><b>LR 9.1 Tenant’s contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land.</b></p> <p>None</p> <p><b>LR9.2 Tenant’s covenant to (or offer to) surrender this lease</b></p> <p>Clause 7</p> <p><b>LR9.3 Landlord’s contractual rights to acquire this lease.</b></p> <p>Clause 7</p>
<p><b>LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the property.</b></p> <p>Insert the relevant provisions or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</p>	<p>None</p>

<p><b>LR11. Easements</b></p> <p>Refer here only to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</p>	<p><b>LR11.1 Easements granted by this lease for the benefit of the Property.</b></p> <p>Schedule 1</p> <p><b>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property</b></p> <p>Schedule 2</p>
<p><b>LR12. Estate recharge burdening the Property</b></p> <p>Refer here to only to the clause, schedule or paragraph of a schedule in this lease which sets out the rent charge.</p>	<p>None</p>
<p><b>LR13. Application for standard form of restriction</b></p> <p>Set out the full text of the statement form of restriction and the title against which it is to be entered. If you wish to apply for more than one standard form of restriction use this clause to apply for each of them, tell us who is applying against which title and set out the full text of the restriction you are applying for.</p> <p>Standard forms of restriction are set out in Schedule 4 to the Land Registry Rules 2003.</p>	<p>None</p>
<p><b>LR14. Declaration of trust where there is more than one person comprising the Tenant.</b></p> <p>If the Tenant is one person, omit or delete all the alternative statements.</p> <p>If the Tenant is more than one person, complete this clause by omitting or deleting all inapplicable alternative statements.</p>	<p>The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants</p> <p><b>OR</b></p> <p>The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares</p> <p><b>OR</b></p> <p>The Tenant is more than one person. They are to hold the Property on trust <i>complete as necessary</i></p>



Second Schedule hereto **TO HOLD** the same for the term of 125 years from the (3) day of (4) paying therefor during the said term the yearly rent of £10 by equal quarterly payments in advance on the 1st day of April the 1st day of July the 1st day of October and the 1st day of January in each year the first payment being a proportionate part of a quarter's rent for the period from the date hereof to the quarter day next following the date hereof to be made on the execution hereof

2. The Tenant hereby covenants with the Council:-

- 2.1 To pay the said rent at the times and in manner aforesaid without any deduction
- 2.2 To pay all rates taxes assessments charges impositions and outgoings which may at any time during the said term be assessed charged or imposed on the demised premises or any part thereof or the owner or occupier in respect thereof
- 2.3
  - 2.3.1 To pay to the Council the Service Charge contributions set out in the Third Schedule hereto respectively at the times and in the manner there set out subject to the limitations placed upon such payments by the Act and the Landlord and Tenant Act 1985 as amended
  - 2.3.2 If any payment of or on account of Service Charge is not made on the due date for payment thereof for any reason including dispute as to the amount properly payable then to pay interest thereon from the due date until the date of payment as well after as before judgment upon the amount properly payable at a rate equal to 3% over the base rate for the time being of the National Westminster Bank plc or such other bank as may be the successor to the business of the said bank (hereinafter called "the specified rate")
- 2.4 To pay a fair proportion of the expense of repairing the party walls bounding the Flat and/or the Outbuilding
- 2.5
  - 2.5.1 To keep the Flat and every part thereof (except any part which the Council is obliged to repair under clause 3 hereof) and all walls sewers drains pipes cables wires and appurtenances thereof and all fixtures and fittings therein and all additions thereto and the glass in the windows the fittings to the external windows and the fittings to the external doors thereof in good and tenable repair and condition (including decorative repair) and in particular (but without prejudice to the generality of the foregoing) so as to provide shelter and support to the parts of the Building other than the demised premises
  - 2.5.2 To clean the windows of the Flat as often as may be necessary
  - 2.5.3 To keep the Outbuilding and every part thereof (except any part which the Council is obliged to repair under clause 3 hereof) in good and tenable repair and condition (including decorative repair) and in particular so as to provide shelter and support to those parts not hereby demised of the Outbuilding Block(s) of which the Outbuilding forms part

- 2.6 2.6.1 To permit the Council and its agents or licensees upon reasonable notice to enter the demised premises to examine the state and condition thereof
- 2.6.2 To make good all defects decays or wants of repair of which notice in writing shall be given by the Council to the Tenant and for which the Tenant may be liable hereunder within two months of service of such notice
- 2.7 2.7.1 To permit the Council and its agents or licensees upon reasonable notice (except in emergency) to enter the demised premises for the purpose of examining any part of the Building and/or the Outbuilding Block(s) for the repair of which the Council is responsible or for the purpose of carrying out any works reasonably required for the performance of the Council's obligations under clause 3 hereof (the Council making good any damage caused thereby to the Flat and/or the Outbuilding) or for the purpose of making good (at the expense of the Tenant) any defects decays or wants of repair of which notice has been given under the foregoing covenant and which the Tenant has not made good within two months of the service of such notice
- 2.7.2 To permit the tenants of other parts of the Building and/or the Outbuilding Block(s) and their agents or licensees upon reasonable notice (except in emergency) to enter the demised premises for the purposes:
- 2.7.2.1 of carrying out any obligations of such tenants to the Council under covenants relating to other parts of the Building and/or the Outbuilding Block(s) and similar to those herein contained
- 2.7.2.2 of repairing maintaining or renewing any easement enjoyed by such tenants over the demised premises
- in either case causing as little damage as possible and making good all damage caused
- 2.8 Not to make any structural alterations or structural additions to the Flat and/or the Outbuilding Block(s) or any alterations or additions which alter the external appearance of the Flat and/or the Outbuilding Block(s) or remove any of the Council's fixtures and fittings without the previous consent in writing of the Council
- 2.9 2.9.1 Not to assign part only of the demised premises
- 2.9.1 Within one month after any transfer mortgage or charge of this lease or any underlease of the demised premises or any part thereof and every assignment of such underlease or any probate letters of administration court order or other instrument effecting or evidencing any devolution of title to this lease or any underlease to produce the same to the Council for registration and pay to the Council such registration fee as the Council shall reasonably demand

- 2.10 Forthwith after service upon the Tenant or occupier of the demised premises of any notice affecting the demised premises served by any person or body (other than the Council) to deliver a true copy thereof to the Council and if so required by the Council to join with the Council in making such representations to such person or body concerning any proposals affecting the demised premises as the Council may consider desirable and to join with the Council in any appeal against any order or direction affecting the demised premises as the Council may consider desirable
- 2.11 Upon receipt of any lawful notice order or direction from any competent authority affecting the demised premises requiring anything to be done or not done or any works to be executed to comply with the same at the Tenant's expense
- 2.12 To pay all costs charges and expenses incurred by the Council in abating any nuisance in the demised premises or executing any works necessary for that purpose
- 2.13 To pay all costs charges and expenses (including solicitor's costs and surveyor's fees) incurred by the Council for the purpose of or incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court
- 2.14 At the expiration or earlier determination of the said term peaceably to yield up the demised premises to the Council together with all additions thereto and all the Council's fixtures and fittings (if any) in good and tenantable repair and condition
- 2.15 Not to use or permit or suffer the Flat to be used for any purpose other than as a private dwelling house only
- 2.16 Not to do or permit or suffer to be done any act or thing which may be or become a nuisance or annoyance to the Council or to owners or occupiers of adjoining or neighbouring property
- 2.17 Not to keep any dog or other animal (including birds or reptiles) in the demised premises or the Building without the consent in writing of the Council
- 2.18 Not to hang clothing or other articles out of or on windows balconies or common parts of the Building or elsewhere than in areas (if any) designated by the Council for that purpose
- 2.19 Not to beat or shake carpets mops or other articles out of the windows of the Flat
- 2.20 Not to place flower boxes pots or other objects outside the windows of the Flat without the consent in writing of the Council
- 2.21 Not to obstruct any common parts of the Building or of the Site
- 2.22 Not to park any vehicle on the Site

- 2.23 To observe all reasonable regulations made by the Council from time to time controlling the exercise of any easements or rights granted with this lease
- 2.24 Not to use or play any radio television record player tape recorder or musical or other noise making instrument of any kind so as to be audible outside the demised premises at any time to occupiers of any neighbouring property
- 2.25 Not to display any writing placard or advertisement at the demised premises so as to be visible from outside
- 2.26 Not to erect any external wireless or television aerial without the consent in writing of the Council
- 2.27 Not to decorate any exterior part of the demised premises without the consent in writing of the Council
- 2.28
  - 2.28.1 Not to do or permit or suffer to be done any act or thing which may render void or voidable any policy of insurance in respect of the Building and/or the Outbuilding Block(s) or any part thereof or cause an increased premium to be payable in respect thereof
  - 2.28.2 Not to use or keep or permit or suffer to be used or kept in the demised premises or the Building any inflammable materials liquids or gases other than those required for normal household use
  - 2.28.3 Not to use or keep or permit or suffer to be used or kept in the demised premises any liquid petroleum gas or other bottled gas appliance
- 2.29
  - 2.29.1 If within a period of five years from the grant hereof there is a relevant disposal as defined by Section 159(1) and (2) of the Act which is not exempted by Section 160(1) and (2) of the Act of the whole or part of the Flat to pay to the Council on demand the amount specified in section 155(2) and Section 155A and Section 155C of the Act but if there is more than one such disposal then only on the first of them and for the purposes of this covenant the grant of an option enabling a person to call for such a disposal shall be treated as such a disposal
  - 2.29.2 It is hereby declared that the amount of the discount referred to in Section 155(2) and Section 155A and Section 155C of the Act upon the grant of this lease is the amount specified in Part V of the Fourth Schedule hereto
  - 2.29.3 The liability that may arise under the covenant in paragraph 2.29.1 of this sub-clause shall be a charge on the demised premises in accordance with the provisions of Section 156(1) and (2) of the Act
- 2.30 To observe and perform such other reasonable regulations or restrictions as may be made from time to time by the Council for the management of the Site the Building and the Outbuilding Block(s)

3. The Council hereby covenants with the Tenant:-
  - 3.1 That the Tenant paying the rent hereby reserved and observing and performing the several covenants on his part and the condition herein contained shall peaceably hold and enjoy the Flat during the said term without any interruption by the Council or any person rightfully claiming under or in trust for it
  - 3.2 To keep in repair the structure and exterior of the Flat and the Outbuilding and the Building and the Outbuilding Block(s) including drains gutters and external pipes external windows (including the frames but excluding the glass and fittings thereof and also excluding any internal double glazing frames) external doors (including the frames but excluding the fittings thereof) and to make good any defect affecting that structure
  - 3.3 To keep in repair any other property over or in respect of which the Tenant has any rights under the First Schedule hereto
  - 3.4 As often as may be reasonably necessary to paint in a good and workmanlike manner with at least two coats of good quality paint all outside parts of the Building and the Outbuilding Block(s) usually painted and also all internal common parts (if any) of the Building usually painted
  - 3.5 To ensure so far as practicable that any of the following services which are provided by the Council to or for the Flat are maintained at a reasonable level and to keep in repair and renew where necessary such equipment and any installation connected with the provision of those services and equipment namely:-
    - 3.5.1 in the Building
      - 3.5.2.1 window cleaning of the common parts
      - 3.5.2.2 light cleaning and maintenance of common parts
      - 3.5.2.3 refuse chutes
      - 3.5.2.4 collection and/or disposal of refuse
      - 3.5.2.5 controlled entry system
      - 3.5.2.6 maintenance of common television aerial or landline
      - 3.5.2.7 drying facilities
    - 3.5.3 on the Site
      - 3.5.3.1 drying facilities
      - 3.5.3.2 lighting cleaning and maintenance of landscaped areas
  - 3.6 To rebuild or reinstate the Flat and the Outbuilding and the Building and the Outbuilding Block(s) in the event of destruction or damage by fire tempest



flood or any other cause against the risk of which it is normal practice to insure

4. **PROVIDED** always and it is hereby agreed and declared as follows:-

4.1 If the rent hereby reserved or any part thereof shall be unpaid for twenty-one days after becoming payable (whether formally demanded or not) or if any covenant on the part of the Tenant herein contained shall not be observed or performed then and in any such case it shall be lawful for the Council at any time thereafter to re-enter the demised premises or any part thereof in the name of the whole and thereupon this lease shall absolutely determine but without prejudice to any right of action or remedy of the Council in respect of any antecedent breach of any of the Tenant's covenants or the conditions herein contained

4.2 In this lease unless the context otherwise requires

4.2.1 "the Council" includes the person for the time being entitled to the reversion immediately expectant on the determination of the term hereby granted

4.2.2 "the Tenant" includes the successors in title of the Tenant

4.2.3 the singular shall include the plural and vice versa

4.2.4 the masculine shall include the feminine

4.2.5 where the consent of the Council is required such consent shall be sought from the Director of Housing Services for the time being of the Council or such substituted officer appointed from time to time

4.3 Where the Tenant for the time being consists of two or more persons all covenants by the Tenant shall be deemed to be made by such persons jointly and severally

4.4 Nothing herein contained shall in any way affect or prejudice the powers and duties of the Council under the statutes for the time being in force in relation to Town and Country Planning and nothing done by the Council under any such statute shall be deemed to be construed to affect or prejudice the position powers rights or remedies of the Council as landlords under this lease

4.5 Section 196 of the Law of Property Act 1925 (as amended or re-enacted from time to time) shall apply to any notice under this lease

4.6 Any sums payable hereunder by the Tenant shall be deemed to be exclusive of Value Added Tax and the amount of any such tax payable thereon shall be paid by the Tenant to the Council

5. If the original grantees of this lease consist of two or more persons they hereby declare that they hold this lease upon the statutory trusts for sale and hold the net rents and profits until sale and the net proceeds of sale upon trust for themselves as joint tenants beneficially

6. The Council and the Tenant hereby jointly apply to the Registrar to enter on the Register of the title of the demised premises the said charge referred to in Clause 2.29.3 hereof and such of the rights exceptions reservations covenants and other matters herein contained as are capable of registration
7. The Tenant for himself and his successors in title hereby covenants with the Council that no transfer or lease of the demised premises by the proprietor of the demised premises or by the proprietor of any charge registered against the demised premises is to be completed by registration unless made in accordance with section 156A of the Act.
8. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or series of transactions in respect of which the amount of value or aggregate amount or value of the consideration other than rent exceeds £125,000 (One Hundred and Twenty Five Thousand Pounds)
9. The Council and the Tenant hereby certify that there is no agreement for lease to which this lease give effect

**IN WITNESS** whereof the Council has set its Common Seal upon this instrument as a deed and the Tenant has signed this instrument as a deed in the presence of the person mentioned below the day and year first before written

#### **FIRST SCHEDULE**

The demised premises are granted with the following rights exercisable by the Tenant his agents or licensees at all reasonable times and for all purposes connected with the use of the demised premises in accordance with the terms of this lease in common with the Council and all others entitled to exercise any such rights and in accordance with any regulations from time to time concerning the exercise of the same

1. 1.1 The right of subjacent and lateral support for the Flat from other parts of the Building
- 1.2 The right of subjacent and lateral support for the Outbuilding from other parts of the Outbuilding Block(s) of which the Outbuilding forms part
2. Full right of way on foot over such parts of the Building as afford access to the Flat
3. Full right of way on foot over the access path coloured green on Plan No 1 (if any)
4. The right to use the drying facilities (if any) in the Building or the Site for the purpose of drying clothes and household linen
5. The right to use the refuse chutes (if any) serving the Flat between the hours of 7.30 am and 9.00 pm only
6. The free passage and running of water gas or other piped fuel sewage smoke or fumes through the pipes sewers drains vents or passages serving the Flat
7. The right to the use and maintenance of the cables or other installations serving the Flat for the supply of electricity and for the telephone or for the receipt directly or by landline of visual or other wireless transmissions to the Flat

8. The right to use the landscaped areas (if any) hatched blue on Plan No. 1 for amenity purposes only
9. The right at reasonable times and upon reasonable notice (except in emergency) to enter other parts of the Building and/or the Site not hereby demised for the purpose of complying with the Tenant's obligations hereunder or of repairing maintaining or renewing any easement enjoyed by the Tenant over such other parts of the Building and/or the Site the Tenant in any such case causing as little disturbance as possible and making good all damage caused Provided always that each of the foregoing easements and rights is conditional upon the performance and observance by the Tenant of his obligations under this lease

## **SECOND SCHEDULE**

### **Easements and Rights Reserved**

The following easements and rights are reserved from the term hereby granted for the benefit of the Council and the tenants or occupiers of the parts of the Building and/or the Outbuilding Block(s) to which the same are appurtenant

1.
  - 1.1 The right of subjacent and lateral support provided by the Flat for other parts of the Building
  - 1.2 The right of subjacent and lateral support provided by the Outbuilding for other parts of the Outbuilding Block(s) of which the Outbuilding forms part
2. The free passage and running of water gas or other piped fuel sewage smoke or fumes through the pipes sewers drains vents or passages within the Flat but serving other parts of the Building
3. The right to the use and maintenance of cables or other installations for the supply of electricity and for the telephone or for the receipt directly or by landline of visual or other wireless transmissions so far as such cables or other installations are within the Flat but serve other parts of the Building and/or the Site
4. All other easements quasi-easements rights and privileges now appurtenant to any other part of the Building the Outbuildings Block(s) and/or the Site and enjoyed over or in respect of the Flat and/or the Outbuilding
5. The right for the Council and tenants of other parts of the Building and/or the Outbuilding Block(s) and their agents or licensees at all reasonable times upon reasonable notice (except in emergency) to enter the Flat and/or the Outbuilding or any part thereof for the purposes:-
  - 5.1 of inspecting repairing maintaining decorating cleaning (including window cleaning) and renewing any part or parts of the Building and the Outbuilding Block(s) and/or the Site not hereby demised
  - 5.2 of complying with their respective obligations hereunder or under covenants relating to other parts of the Building and/or the Outbuilding Block(s) and similar to those herein contained
  - 5.3 of repairing maintaining or renewing any easement enjoyed by the Council or such tenants over the Flat and/or the Outbuilding

and to place and retain on the Flat and/or the Outbuilding or any part thereof ladders scaffolding and other apparatus and materials necessary for the purposes referred to in 5.1 5.2 and 5.3 above causing as little disturbance as possible and making good all damage caused

6. The right for the Council and its agents and licensees and any statutory undertakers to enter upon the Flat and/or the Outbuilding or any part thereof for the purpose of constructing installing inspecting repairing renewing maintaining and removing pipes conduits wires cables and any other conducting media subject to their making good all damage in the exercise of such right except in so far as such entry may be necessitated by any act or default of the Tenant
7. All other (if any) rights reserved to the Council by or under statute or otherwise

### **THIRD SCHEDULE**

#### **ANNUAL SERVICE CHARGE**

1. 1.1 In this Schedule "year" means a year beginning on 1st April and ending on 31st March
- 1.2 Time shall not be of the essence for service of any notice under this Schedule
2. 2.1 Before the commencement of each year (except the year in which this lease is granted) the Council shall make a reasonable estimate of the amount which will be payable by the Tenant by way of Service Charge (as hereinafter defined) in that year and shall notify the Tenant of that estimate
- 2.2 The Tenant shall pay to the Council in advance on account of Service Charge the amount of such estimate by equal quarterly payments on 1st April 1st July 1st October and 1st January in each year
3. In respect of the year in which this lease is granted
  - 3.1 As soon as practicable after the grant of this lease the Council shall make a reasonable estimate of the amount which will be payable by way of Service Charge in respect of the period from the date hereof to the end of that year and shall notify the Tenant of that estimate
  - 3.2 If such notification is given to the Tenant prior to the 1st January in that year the Tenant shall pay to the Council in advance on account of Service Charge on each of the said quarter days thereafter until the end of that year such part of the amount estimated as aforesaid as the Council shall specify in such notification
  - 3.3 If such notification is given to the Tenant after the 1st January in that year the Tenant shall pay to the Council on the service of such notification the amount estimated as aforesaid
  - 3.4 The Service Charge shall be apportioned by time for the portion of a year from the grant hereof to the end of that year

4. 4.1 As soon as practicable after the end of each year the Council shall ascertain the Service Charge payable for that year and shall notify the Tenant of the amount thereof
- 4.2 Such notice shall contain or be accompanied by a summary of the costs and expenses incurred by the Council under paragraph 7 of this Schedule and state the balance (if any) due under paragraph 5 of this Schedule
5. 5.1 If the Service Charge for the year exceeds the amount paid in advance under paragraph 2 or 3 of this Schedule the Tenant shall pay the balance thereof to the Council within one month of service of the said notice
- 5.2 If the amount so paid in advance by the Tenant exceeds the Service Charge for the year the balance shall be credited against the next advance payment or payments due from the Tenant (or if this lease has then determined be repaid to the Tenant)
6. 6.1 The Service Charge payable by the Tenant shall be a fair proportion of the costs and expenses set out in paragraph 7 of this Schedule incurred in the year
- 6.2 The Council may adopt any reasonable method of ascertaining the said proportion and may adopt different methods in relation to different items of costs and expenses
7. The said costs and expenses are all costs and expenses of or incidental to:
  - 7.1 The carrying out of all works required by sub-clauses 3.2 to 3.5 inclusive of this lease
  - 7.2 Providing the services and equipment specified in sub-clause 3.5 of this lease
  - 7.3 Any insurance costs and expenses the Council may incur to meet its obligations under sub-clause 3.6 of this lease whether by the payment of premiums or by the making of contributions to the Council's internal fund for insurance of the Council's housing property or by any other way whatsoever **PROVIDED THAT** the Tenant shall be entitled to inspect the relevant policy if any at such reasonable times as may be arranged with the Council
  - 7.4 All rates and taxes charged or imposed upon or in respect of the Building and/or the Outbuilding Block(s) or any part thereof or the Site or any part thereof and not the liability of the Tenant or any other tenant or occupier of the Building the Outbuilding Block(s) or the Site
  - 7.5 Any insurance costs and expenses the Council may incur in respect of liability to the Tenant or others in respect of the Building the Outbuilding Block(s) or the Site or against risks involving repairs to the Building and/or the Outbuilding Block(s) whether by the payment of premiums or by the making of contributions to the Council's internal fund for insurance of the Council's housing property or by any other way whatever **PROVIDED THAT** the Tenant shall be entitled to inspect the relevant policy if any at such reasonable times as may be arranged with the Council

- 7.6 The maintenance and management of the Building the Outbuilding Block(s) and the Site
- 7.7 The employment of any managing agents appointed by the Council in respect of the Building the Outbuilding Block(s) or the Site or any part thereof Provided that if no managing agents are so employed then the Council may add a reasonable sum for the Council's costs of management of the Building the Outbuilding Block(s) or the Site or any part thereof
- 7.8 Any other costs and expenses reasonably incurred by the Council in respect of the Building the Outbuilding Block(s) or the Site of any part thereof including the costs and expenses of any improvements to the Building and/or the Site whether incurred in consequence of complying with the provisions of the Act or any other legislation or otherwise howsoever incurred
8. The summary of costs and expenses referred to in paragraph 4 of this Schedule shall contain an explanation of the manner in which the proportion of those costs and expenses apportioned to the demised premises under paragraph 6 of this Schedule has been calculated
9. Moneys paid under paragraph 2.2 of this Schedule shall become part of the funds of the Council and shall not be impressed with any trust requiring them to be set aside as a separate fund for any particular purpose

#### **FOURTH SCHEDULE**

##### **PART I**

##### **(NAME AND ADDRESS OF PURCHASER)**

(5)

##### **PART II (a)**

##### **(DESCRIPTION OF THE BUILDING)**

**ALL THAT** block of flats known as (6) coloured red on Plan No. 1

##### **PART II (b)**

##### **(DESCRIPTION OF THE OUTBUILDING BLOCK(S))**

**ALL [THAT/THOSE]** block of outbuildings shown edged brown on Plan No. 1

##### **PART III**

##### **(PRICE)**

(7)

**PART IV (a)**

**(DESCRIPTION OF THE FLAT)**

**ALL THAT** maisonette known as No. (8) on the (9) and (10) floors of the Building and shown edged red on Plan No. 2 annexed hereto (hereinafter called "Plan No. 2) including the ceiling and floors of the Flat the internal plaster and faces of the exterior walls of the Flat the internal walls of the Flat (but internal walls bounding the Flat shall be party walls severed medially) but excluding exterior walls roof foundations and other main structural parts of the Building

**PART IV (b)**

**(DESCRIPTION OF THE OUTBUILDING)**

**ALL THAT** outbuilding shown coloured brown on Plan No. 1 situated in the Outbuilding Block(s)

**PART V**

**(DISCOUNT)**

(11)

**THE COMMON SEAL OF LEEDS CITY COUNCIL**

was hereunto affixed in the presence of:-

Director of Legal and Democratic Services

**SIGNED AND DELIVERED** as a Deed  
by the Tenant in the presence of:-

Name of Witness

Address

Occupation

DATED

**HOUSING ACT 1985**

**LEEDS CITY COUNCIL**

**-to-**

**(12)**

**LEASE**

of premises known as Flat Number (13) in the City of Leeds

NICOLÉ JACKSON  
Chief Legal Officer  
Civic Hall LEEDS  
LS1 1UR

(Ref: )



**TOWERBLOCK LEASE**

<p><b>LR1. Date of Lease</b></p>	
<p><b>LR2. Title Number(s)</b></p>	<p><b>LR2.1 Landlord's title number(s)</b> Title number(s) out of which this lease is granted. Leave blank if not registered. <b>WYK 820419</b></p> <p><b>LR2.2 Other title numbers</b> Existing title number(s) against which entries of matters referred to in LR9, LR10, LR11 and LR13 are to be made</p>
<p><b>LR3. Parties to this lease</b></p> <p>Give the full names, addresses of each of the parties.</p>	<p><b>Landlord</b> LEEDS CITY COUNCIL Civic Hall, Leeds, LS1 1UR</p> <p><b>Tenant</b></p>
<p><b>LR4. Property</b></p> <p>Insert a full description of the land being leased</p> <p>Or</p> <p>Refer to the clause, schedule or paragraph of a schedule in this lease in which the land being leased is more fully described.</p> <p>Where there is a letting of part of a registered title, a plan must be attached to this lease and any floor levels must be specified.</p>	<p>As set out in Part IV of the Fourth Schedule.</p> <p>In the case of a conflict between this clause and the remainder of this Lease, then, for the purposes of registration, this clause shall prevail.</p>
<p><b>LR5. Prescribed Statements etc</b></p> <p>If this lease includes a statement falling within LR5.1 insert under that sub-clause the relevant statement or refer to the clause, schedule or paragraph of a schedule in this lease which contains the statement.</p> <p>In LR5.2 omit or delete those Acts which do not apply to this lease.</p>	<p><b>LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.</b></p> <p>None</p> <p><b>LR5.2 This lease is made under, or by reference to provisions of:</b> Housing Act 1985 and Housing Act 1988</p>
<p><b>LR6. Term for which the Property is leased</b></p> <p>Include only the appropriate statement (duly completed) from the three options.</p> <p>NOTE: The information you provide, or refer to, here will be used as part of the particulars to identify the lease under rule 6 of the Land Registration Rules 2003</p>	<p>The term as specified in this lease at Clause 1</p>
<p><b>LR7. Premium</b></p> <p>Specify the total premium, inclusive of any VAT</p>	<p>£</p>

where payable.	
<p><b>LR8. Prohibitions or restrictions on disposing of this lease</b></p> <p>Include whichever of the two statements is appropriate.</p> <p>Do not set out here the wording of the provision.</p>	<p>This lease contains a provision that prohibits or restricts dispositions.</p>
<p><b>LR9. Rights of acquisition etc</b></p> <p>Insert the relevant provisions in the sub-clauses or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</p>	<p><b>LR 9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land.</b> None</p> <p><b>LR9.2 Tenant's covenant to (or offer to) surrender this lease</b> Clause 7</p> <p><b>LR9.3 Landlord's contractual rights to acquire this lease.</b> Clause 7</p>
<p><b>LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the property.</b></p> <p>Insert the relevant provisions or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</p>	<p>None</p>
<p><b>LR11. Easements</b></p> <p>Refer here only to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</p>	<p><b>LR11.1 Easements granted by this lease for the benefit of the Property.</b></p> <p>SCHEDULE 1</p>
	<p><b>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property</b></p> <p>SCHEDULE 2</p>
<p><b>LR12. Estate recharge burdening the Property</b></p> <p>Refer here to only to the clause, schedule or paragraph of a schedule in this lease which sets out the rent charge.</p>	<p>None</p>
<p><b>LR13. Application for standard form of restriction</b></p> <p>Set out the full text of the statement form of restriction and the title against which it is to be entered. If you wish to apply for more than one standard form of restriction use this clause to apply for each of them, tell us who is applying against which title and set out the full text of the</p>	<p>None</p>

<p>restriction you are applying for.</p> <p>Standard forms of restriction are set out in Schedule 4 to the Land Registry Rules 2003.</p>	
<p><b>LR14. Declaration of trust where there is more than one person comprising the Tenant.</b></p> <p>If the Tenant is one person, omit or delete all the alternative statements.</p> <p>If the Tenant is more than one person, complete this clause by omitting or deleting all inapplicable alternative statements.</p>	<p>The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants</p> <p><b>OR</b></p> <p>The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares</p> <p><b>OR</b></p> <p>The Tenant is more than one person. They are to hold the Property on trust <i>complete as necessary</i></p>

**H M LAND REGISTRY**

**LAND REGISTRATION ACTS 1925 TO 1988**

**5 Year Discount Period Applies**

County: - **WEST YORKSHIRE - LEEDS DISTRICT**

Title No: - (1)

Property - Flat No: (2)

**THIS LEASE** is made the     day of

**B E T W E E N LEEDS CITY COUNCIL** (hereinafter called "the Council") of the one part and the person whose name and address is specified in Part I of the Fourth Schedule hereto (hereinafter called "the Tenant") of the other part

**W H E R E A S**

1. The Council is seised of the freehold land (hereinafter called "the Site") shown edged red on the Plan No. 1 annexed hereto (hereinafter called "Plan No. 1") on which there [**is a/are**] block[s] of flats
2. The Tenant is entitled under the Housing Act 1985 as amended by the Housing and Planning Act 1986 and the Leasehold Reform, Housing and Urban Development Act 1993 and the Housing Act 2004 (hereinafter called "the Act") to be granted a long lease of the property hereinafter demised (hereinafter called "the Flat") situated in the Building described in Part II of the Fourth Schedule hereto (hereinafter called "the Building")
3. The Tenant (as he hereby acknowledges) has been notified by the Council before the execution of the existence of the structural defects (if any) affecting the Building

**NOW THIS DEED WITNESSETH** as follows:-

1. In pursuance of the Act and in exercise of all other (if any) powers enabling it and in consideration of the price specified in Part III of the Fourth Schedule hereto paid to the Council by the Tenant (the receipt of which the Council hereby acknowledges) and of the rent and covenants by the Tenant hereinafter reserved and contained the Council **HEREBY DEMISES WITH FULL TITLE GUARANTEE** unto the Tenant **ALL THAT** the Flat as more particularly described in Part IV of the Fourth Schedule hereto **TOGETHER WITH** the easements and rights set out in the First Schedule hereto so far as the Council can lawfully grant the same but not further or otherwise **EXCEPT AND RESERVING** as set out in the Second Schedule hereto **TO HOLD** the same for the term of 125 years from the (3) day of (4) paying therefor during the said term the yearly rent of £10 by equal quarterly payments in advance on the 1st day of April the 1st day of July the 1st day of October and the 1st day of January in each year the first payment being a proportionate part of a quarter's rent for the period from the date hereof to the quarter day next following the date hereof to be made on the execution hereof
2. The Tenant hereby covenants with the Council:-
  - 2.1 To pay the said rent at the times and in manner aforesaid without any deduction
  - 2.2 To pay all rates taxes assessments charges impositions and outgoings which may at any time during the said term be assessed charged or imposed on the Flat or any part thereof or the owner or occupier in respect thereof
  - 2.3 2.3.1 To pay to the Council the Service Charge contributions set out in the Third Schedule hereto respectively at the times and in the manner there set out

subject to the limitations placed upon such payments by the Act and the Landlord and Tenant Act 1985 as amended

- 2.3.2 If any payment of or on account of Service Charge is not made on the due date for payment thereof for any reason including dispute as to the amount properly payable then to pay interest thereon from the due date until the date of payment as well after as before judgment upon the amount properly payable at a rate equal to 3% over the base rate for the time being of the National Westminster Bank plc or such other bank as may be the successor to the business of the said bank (hereinafter called "the specified rate")
- 2.4 To pay a fair proportion of the expense of repairing the party walls bounding the Flat
- 2.5 2.5.1 To keep the Flat and every part thereof (except any part which the Council is obliged to repair under clause 3 hereof) and all walls sewers drains pipes cables wires and appurtenances thereof and all fixtures and fittings therein and all additions thereto and the glass in the windows the fittings to the external windows and the fittings to the external doors thereof in good and tenable repair and condition (including decorative repair) and in particular (but without prejudice to the generality of the foregoing) so as to provide shelter and support to the parts of the Building other than the Flat
- 2.5.3 To clean the windows of the Flat as often as may be necessary
- 2.6 2.6.1 To permit the Council and its agents or licensees upon reasonable notice to enter the Flat to examine the state and condition thereof
- 2.6.2 To make good all defects decays or wants of repair of which notice in writing shall be given by the Council to the Tenant and for which the Tenant may be liable hereunder within two months of service of such notice
- 2.7 2.7.1 To permit the Council and its agents or licensees upon reasonable notice (except in emergency) to enter the Flat for the purpose of examining any part of the Building for the repair of which the Council is responsible or for the purpose of carrying out any works reasonably required for the performance of the Council's obligations under clause 3 hereof (the Council making good any damage caused thereby to the Flat) or for the purpose of making good (at the expense of the Tenant) any defects decays or wants of repair of which notice has been given under the foregoing covenant and which the Tenant has not made good within two months of the service of such notice
- 2.7.2 To permit the tenants of other parts of the Building and their agents or licensees upon reasonable notice (except in emergency) to enter the Flat for the purposes:-
- 2.7.2.1 of carrying out any obligations of such tenants to the Council under covenants relating to other parts of the Building and similar to those herein contained
- 2.7.2.2 of repairing maintaining or renewing any easement enjoyed by such tenants over the Flat
- in either case causing as little damage as possible and making good all damage caused
- 2.8 Not to make any structural alterations or structural additions to the Flat or any alterations or additions which alter the external appearance of the Flat or remove any of the Council's fixtures and fittings without the previous consent in writing of the Council

- 2.9 2.9.1 Not to assign part only of the Flat
- 2.9.2 Within one month after any transfer mortgage or charge of this lease or any underlease of the Flat or any part thereof and every assignment of such underlease or any probate letters of administration Court Order or other instrument effecting or evidencing any devolution of title to this lease or any underlease to produce the same to the Council for registration and pay to the Council such registration fee as the Council shall reasonably demand
- 2.10 Forthwith after service upon the Tenant or occupier of the Flat of any notice affecting the Flat served by any person or body (other than the Council) to deliver a true copy thereof to the Council and if so required by the Council to join with the Council in making such representations to such person or body concerning any proposals affecting the Flat as the Council may consider desirable and to join with the Council in any appeal against any order or direction affecting the Flat as the Council may consider desirable
- 2.11 Upon receipt of any lawful notice order or direction from any competent authority affecting the Flat requiring anything to be done or not done or any works to be executed to comply with the same at the Tenant's expense
- 2.12 To pay all costs charges and expenses incurred by the Council in abating any nuisance in the Flat or executing any works necessary for that purpose
- 2.13 To pay all costs charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Council for the purpose of or incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court
- 2.14 At the expiration or earlier determination of the said term peaceably to yield up the Flat to the Council together with all additions thereto and all the Council's fixtures and fittings (if any) in good and tenantable repair and condition
- 2.15 Not to use or permit or suffer the Flat to be used for any purpose other than as a private dwellinghouse only
- 2.16 Not to do or permit or suffer to be done any act or thing which may be or become a nuisance or annoyance to the Council or to owners or occupiers of adjoining or neighbouring property
- 2.17 Not to keep any dog or other animal (including birds or reptiles) in the Flat or the Building without the consent in writing of the Council
- 2.18 Not to hang clothing or other articles out of or on windows balconies or common parts of the Building or elsewhere than in areas (if any) designated by the Council for that purpose
- 2.19 Not to beat or shake carpets mops or other articles out of the windows of the Flat
- 2.20 Not to place flower boxes pots or other objects outside the windows of the Flat without the consent in writing of the Council
- 2.21 Not to obstruct any common parts of the Building or of the Site
- 2.22 Not to park any vehicle on the Site except as authorised in paragraph 8 of the First Schedule to this lease
- 2.23 To observe all reasonable regulations made by the Council from time to time controlling the exercise of any easements or rights granted with this lease

- 2.24 Not to use or play any radio television record player tape recorder or musical or other noise making instrument of any kind so as to be audible outside the Flat at any time to occupiers of any neighbouring property
- 2.25 Not to display any writing placard or advertisement at the Flat so as to be visible from outside
- 2.26 Not to erect any external wireless or television aerial without the consent in writing of the Council
- 2.27 Not to decorate any exterior part of the Flat without the consent in writing of the Council
- 2.28
  - 2.28.1 Not to do or permit or suffer to be done any act or thing which may render void or voidable any policy of insurance in respect of the Building or any part thereof or cause an increased premium to be payable in respect thereof
  - 2.28.2 Not to use or keep or permit or suffer to be used or kept in the Flat or the Building any inflammable materials liquids or gases other than those required for normal household use
  - 2.28.3 Not to use or keep or permit or suffer to be used or kept in the Flat any liquid petroleum gas or other bottled gas appliance
- 2.29
  - 2.29.1 If within a period of five years from the grant hereof there is a relevant disposal as defined by Section 159(1) and (2) of the Act which is not exempted by Section 160(1) and (2) of the Act of the whole or part of the Flat to pay to the Council on demand the amount referred to in Section 155(2) and Section 155A and Section 155C of the Act but if there is more than one such disposal then only on the first disposal and for the purposes of this covenant the grant of an option enabling a person to call for such a disposal shall be treated as such a disposal
  - 2.29.2 It is hereby declared that the amount of the discount referred to in Section 155(2) and Section 155A and Section 155C of the Act upon the grant of this lease is the amount specified in Part V of the Fourth Schedule hereto
  - 2.29.3 The liability that may arise under the covenant in paragraph 2.29.1 of this sub-clause shall be a charge on the Flat in accordance with the provisions of Section 156(1) and (2) of the Act
- 2.30 To observe and perform such other reasonable regulations or restrictions as may be made from time to time by the Council for the management of the Site and/or the Building

3. The Council hereby covenants with the Tenant:-

- 3.1 That the Tenant paying the rent hereby reserved and observing and performing the several covenants on his part and the condition herein contained shall peaceably hold and enjoy the Flat during the said term without any interruption by the Council or any person rightfully claiming under or in trust for it
- 3.2 To keep in repair the structure and exterior of the Flat and the Building including drains gutters and external pipes external windows (including the frames but excluding the glass and fittings thereof and also excluding any internal double glazing frames) external doors (including the frames but excluding the fittings thereof) and to make good any defect affecting that structure
- 3.3 To keep in repair any other property over or in respect of which the Tenant has any rights under the First Schedule hereto

- 3.4 As often as may be reasonably necessary to paint in a good and workmanlike manner with at least two coats of good quality paint all outside parts of the Building usually painted and also all internal common parts (if any) of the Building usually painted
- 3.5 To ensure so far as practicable that any of the following services and equipment which are provided by the Council or for the Flat are maintained at a reasonable level and to keep in repair and renew where necessary such equipment and any installation connected with the provision of those services and equipment namely:-
- 3.5.1 in the Building
- 3.5.1.1 fire prevention equipment
  - 3.5.1.2 window cleaning of common parts
  - 3.5.1.3 lifts
  - 3.5.1.4 lighting cleaning and maintenance of the common parts
  - 3.5.1.5 refuse chutes
  - 3.5.1.6 collection and/or disposal of refuse
  - 3.5.1.7 controlled entry system
  - 3.5.1.8 maintenance of common television aerial or landline
  - 3.5.1.9 drying facilities
  - 3.5.1.10 domestic water supply booster
  - 3.5.1.11 pay telephone kiosk
  - 3.5.1.12 provision of caretaker and other necessary employees or agents
- 3.5.2 on the Site
- 3.5.2.1 lighting and cleaning of roads paths car parks forecourts or other common parts
  - 3.5.2.2 lighting cleaning and maintenance of landscaped areas
  - 3.5.2.3 provision of caretaker and other necessary employees or agents
- 3.6 To rebuild or reinstate the Flat and the Building in the event of destruction or damage by fire tempest flood or any other cause against the risk of which it is normal practice to insure

4. **PROVIDED** always and it is hereby agreed and declared as follows:-

- 4.1 If the rent hereby reserved or any part thereof shall be unpaid for twenty-one days after becoming payable (whether formally demanded or not) or if any covenant on the part of the Tenant herein contained shall not be observed or performed then and in any such case it shall be lawful for the Council at any time thereafter to re-enter the Flat any part thereof in the name of the whole and thereupon this lease shall absolutely determine but without



prejudice to any right of action or remedy of the Council in respect of any antecedent breach of any of the Tenant's covenants or the conditions herein contained

- 4.2 In this Lease unless the context otherwise requires
  - 4.2.1 "the Council" includes the person for the time being entitled to the reversion immediately expectant on the determination of the term hereby granted
  - 4.2.2 "the Tenant" includes the successors in title of the Tenant
  - 4.2.3 the singular shall include the plural and vice versa
  - 4.2.4 The masculine shall include the feminine
  - 4.2.5 where the consent of the Council is required such consent shall be sought from the Director of Housing Services for the time being of the Council or such substituted officer appointed from time to time
- 4.3 Where the Tenant for the time being consists of two or more persons all covenants by the Tenant shall be deemed to be made by such persons jointly and severally
- 4.4 Nothing herein contained shall in any way affect or prejudice the powers and duties of the Council under the statutes for the time being in force in relation to Town and Country Planning and nothing done by the Council under any such statute shall be deemed to be construed to affect or prejudice the position powers rights or remedies of the Council as landlords under this lease
- 4.5 Section 196 of the Law of Property Act 1925 (as amended or re-enacted from time to time) shall apply to any notice under this lease
- 4.6 Any sums payable hereunder by the Tenant shall be deemed to be exclusive of Value Added Tax and the amount of any such tax payable thereon shall be paid by the Tenant to the Council
5. If the original grantees of this lease consist of two or more persons they hereby declare that they hold this lease upon the statutory trusts for sale and hold the net rents and profits until sale and the net proceeds of sale upon trust for themselves as joint tenants beneficially
6. The Council and the Tenant hereby jointly apply to the Registrar to enter on the Register of the title of the Flat the said charge referred to in Clause 2.29.3 hereof and such of the rights exceptions reservations covenants and other matters herein contained as are capable of registration
7. The Tenant for himself and his successors in title hereby covenants with the Council that no transfer or lease of the demised premises by the proprietor of the demised premises or by the proprietor of any charge registered against the demised premises is to be completed by registration unless made in accordance with section 156A of the Act.
8. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or series of transactions in respect of which the amount of value or aggregate amount or value of the consideration other than rent exceeds £125,000 (One Hundred and Twenty Five Thousand Pounds)
9. The Council and the Tenant hereby certify that there is no agreement for lease to which this lease give effect

**IN WITNESS** whereof the Council has set its Common Seal upon this instrument as a deed and the Tenant has signed this instrument as a deed in the presence of the person mentioned below the day and year first before written

### **FIRST SCHEDULE**

The Flat is granted with the following rights exercisable by the Tenant his agents or licensees at all reasonable times and for all purposes connected with the use of the Flat in accordance with the terms of this lease in common with the Council and all others entitled to exercise any such rights and in accordance with any regulations from time to time concerning the exercise of the same

1. The right of subjacent and lateral support for the Flat from other parts of the Building
2. Full right of way on foot over such parts of the Building as afford access to the Flat
3. Full right of way on foot over the access path coloured green on Plan No. 1 (if any)
4. Full right of way with or without private cars or motor cycles over the roads (if any) on the Site
5. The right to use the lifts (if any) in the Building serving the Flat
6. The right to use the drying facilities (if any) in the Building for the purpose of drying clothes and household linen
7. The right to use the refuse chutes (if any) serving the Flat between the hours of 7.30 am and 9.00 pm only
8. The right to park one private car or motor cycle (in working order and belonging to or primarily used by the Tenant or a member of his family residing at the Flat) in the area place (if any) designated for that purpose Provided that there is space available
9. The free passage and running of water gas or other piped fuel sewage smoke or fumes through the pipes sewers drains vents or passages serving the Flat
10. The right to the use and maintenance of the cables or other installations serving the Flat for the supply of electricity and for the telephone or for the receipt directly or by landline of visual or other wireless transmissions to the Flat
11. The right to use the landscaped areas (if any) hatched blue on Plan No. 1 for amenity purposes only
12. The right at reasonable times and upon reasonable notice (except in emergency) to enter other parts of the Building and/or the Site not hereby demised for the purpose of complying with the Tenant's obligations hereunder or of repairing maintaining or renewing any easement enjoyed by the Tenant over such other parts of the Building and/or the Site the Tenant in any such case causing as little disturbance as possible and making good all damage caused

**PROVIDED ALWAYS** that each of the foregoing easements and rights is conditional upon the performance and observance by the Tenant of his obligations under this lease

### **SECOND SCHEDULE**

#### **Easements and Rights Reserved**

The following easements and rights are reserved from the term hereby granted for the benefit of the Council and the tenants or occupiers of the parts of the Building to which the same are appurtenant

1. The right of subjacent and lateral support provided by the Flat for other parts of the Building
2. The free passage and running of water gas or other piped fuel sewage smoke or fumes through the pipes sewers drains vents or passages within the Flat but serving other parts of the Building
3. The right to the use and maintenance of cables or other installations for the supply of electricity and for the telephone or for the receipt directly or by landline of visual or other wireless transmissions so far as such cables or other installations are within the Flat but serve other parts of the Building and/or the Site
4. All other easements quasi-easements rights and privileges now appurtenant to any other part of the Building and/or the Site and enjoyed over or in respect of the Flat
5. The right for the Council and tenants of other parts of the Building and their agents or licensees at all reasonable times upon reasonable notice (except in emergency) to enter the Flat or any part thereof for the purposes
  - 5.1 of inspecting repairing maintaining decorating cleaning (including window cleaning) and renewing any part or parts of the Building and/or the Site not hereby demised
  - 5.2 of complying with their respective obligations hereunder or under covenants relating to other parts of the Building and similar to those herein contained
  - 5.3 of repairing maintaining or renewing any easement enjoyed by the Council or such tenants over the Flatand to place and retain on the Flat or any part thereof ladders scaffolding and other apparatus and materials necessary for the purposes referred to in 5.1 5.2 and 5.3 above causing as little disturbance as possible and making good all damage caused
6. The right for the Council and its agents and licensees and any statutory undertakers to enter upon the Flat or any part thereof for the purpose of constructing installing inspecting repairing renewing maintaining and removing pipes conduits wires cables and any other conducting media subject to their making good all damage in the exercise of such right except in so far as such entry may be necessitated by any act or default of the Tenant
7. All other (if any) rights reserved to the Council by or under statute or otherwise

### **THIRD SCHEDULE**

#### **ANNUAL SERVICE CHARGE**

1.
  - 1.1 In this Schedule "year" means a year beginning on 1st April and ending on 31st March
  - 1.2 Time shall not be of the essence for service of any notice under this Schedule
2.
  - 2.1 Before the commencement of each year (except the year in which this lease is granted) the Council shall make a reasonable estimate of the amount which will be payable by the Tenant by way of Service Charge (as hereinafter defined) in that year and shall notify the Tenant of that estimate
  - 2.2 The Tenant shall pay to the Council in advance on account of Service Charge the amount of such estimate by equal quarterly payments on 1st April 1st July 1st October and 1st January in each year
3. In respect of the year in which this lease is granted

- 3.1 As soon as practicable after the grant of this lease the Council shall make a reasonable estimate of the amount which will be payable by way of Service Charge in respect of the period from the date hereof to the end of that year and shall notify the Tenant of that estimate
- 3.2 If such notification is given to the Tenant prior to the 1st January in that year the Tenant shall pay to the Council in advance on account of Service Charge on each of the said quarter days thereafter until the end of that year such part of the amount estimated as aforesaid as the Council shall specify in such notification
- 3.3 If such notification is given to the Tenant after the 1st January in that year the Tenant shall pay to the Council on the service of such notification the amount estimated as aforesaid
- 3.4 The Service Charge shall be apportioned by time for the portion of a year from the grant hereof to the end of that year
4. 4.1 As soon as practicable after the end of each year the Council shall ascertain the Service Charge payable for that year and shall notify the Tenant of the amount thereof
- 4.2 Such notice shall contain or be accompanied by a summary of the costs and expenses incurred by the Council under paragraph 7 of this Schedule and state the balance (if any) due under paragraph 5 of this Schedule
5. 5.1 If the Service Charge for the year exceeds the amount paid in advance under paragraph 2 or 3 of this Schedule the Tenant shall pay the balance thereof to the Council within one month of service of the said notice
- 5.2 If the amount so paid in advance by the Tenant exceeds the Service Charge for the year the balance shall be credited against the next advance payment or payments due from the Tenant (or if this lease has then determined be repaid to the Tenant)
6. 6.1 Service Charge payable by the Tenant shall be a fair proportion of the costs and expenses set out in paragraph 7 of this Schedule incurred in the year
- 6.2 The Council may adopt any reasonable method of ascertaining the said proportion and may adopt different methods in relation to different items of costs and expenses
7. The said costs and expenses are all costs and expenses of or incidental to:-
  - 7.1 The carrying out of all works required by sub-clauses 3.2 to 3.5 inclusive of this lease
  - 7.2 Providing the services and equipment specified in sub-clause 3.5 of this lease
  - 7.3 Any insurance costs and expenses the Council may incur to meet its obligations under sub-clause 3.6 of this lease whether by the payments of premiums or by the making of contributions to the Council's internal fund for insurance of the Council's housing property or by any other way whatsoever **PROVIDED THAT** the Tenant shall be entitled to inspect the relevant policy if any at such reasonable times as may be arranged with the Council
  - 7.4 All rates and taxes charged or imposed upon or in respect of the Building or any part thereof or the Site or any part thereof and not the liability of the Tenant or any other tenant or occupier of the Building or the Site
  - 7.5 Any insurance costs and expenses the Council may incur in respect of liability to the Tenant or others in respect of the Building or the Site or against risks involving repairs to the Building whether by the payment of premiums or by the making of

contributions to the Council's internal fund for insurance of the Council's housing property or by any other way whatever **PROVIDED THAT** the Tenant shall be entitled to inspect the relevant Policy if any at such reasonable times as may be arranged with the Council

- 7.6 The maintenance and management of the Building and the Site
  - 7.7 The employment of any managing agents appointed by the Council in respect of the Building or the Site or any part thereof Provided that if no managing agents are so employed then the Council may add a reasonable sum for the Council's costs of management of the Building or the Site or any part thereof
  - 7.8 Any other costs and expenses reasonably incurred by the Council in respect of the Building or the Site or any part thereof including the costs and expenses of any improvements to the Building and/or the Site whether incurred in consequence of complying with the provisions of the Act or any other legislation or otherwise howsoever incurred
8. The summary of costs and expenses referred to in paragraph 4 of this Schedule shall contain an explanation of the manner in which the proportion of those costs and expenses apportioned to the Flat under paragraph 6 of this Schedule has been calculated
  9. Moneys paid under paragraph 2.2 of this Schedule shall become part of the funds of the Council and shall not be impressed with any trust requiring them to be set aside as a separate fund for any particular purpose

#### **FOURTH SCHEDULE**

##### **PART I**

##### **(NAME AND ADDRESS OF PURCHASER)**

(5)

##### **PART II**

##### **(DESCRIPTION OF THE BUILDING)**

**ALL THAT** block of flats known as (6)

##### **PART III**

##### **(PRICE)**

(7)

##### **PART IV**

##### **(DESCRIPTION OF THE FLAT)**

**ALL THAT** flat known as flat number (8) on the (9) floor of that part of the Building shown edged red on the plan No. 2 annexed hereto (hereinafter called "Plan No. 2") Together with the store room (if any)

on the ground floor of the Building and shown edged red on Plan No. 2 and including the ceilings and floors of the Flat the internal plaster and faces of the exterior walls of the Flat the internal walls of the Flat (but internal walls bounding the Flat shall be party walls severed medially) but excluding exterior walls roof foundations and other main structural parts of the Building

**PART V**  
**(DISCOUNT)**

(10)

**EXECUTED BY THE COUNCIL AS A DEED (BUT NOT DELIVERED UNTIL THE DATE HEREOF)**

**THE COMMON SEAL OF LEEDS CITY COUNCIL** was  
hereunto affixed in the presence of:-

Director of Legal and Democratic Services

**SIGNED AND DELIVERED** as a Deed  
by the Tenant in the presence of:-

Name of Witness

Address

Occupation

DATED

**HOUSING ACT 1985**

**LEEDS CITY COUNCIL**

**-to-**

**(11)**

**LEASE**

of premises know as Flat Number (12)

NICOLÉ JACKSON  
Director of Legal and Democratic Services  
Civic Hall  
LEEDS  
LS1 1UR

(Ref: )

## COTTAGE FLAT LEASE

<b>LR1. Date of Lease</b>	
<b>LR2. Title Number(s)</b>	<p><b>LR2.1 Landlord's title number(s)</b> Title number(s) out of which this lease is granted. Leave blank if not registered.</p> <p><b>LR2.2 Other title numbers</b> Existing title number(s) against which entries of matters referred to in LR9, LR10, LR11 and LR13 are to be made</p>
<p><b>LR3. Parties to this lease</b></p> <p>Give the full names, addresses of each of the parties.</p>	<p><b>Landlord</b> LEEDS CITY COUNCIL Civic Hall, Leeds, LS1 1UR</p> <p><b>Tenant</b></p>
<p><b>LR4. Property</b></p> <p>Insert a full description of the land being leased Or Refer to the clause, schedule or paragraph of a schedule in this lease in which the land being leased is more fully described.</p> <p>Where there is a letting of part of a registered title, a plan must be attached to this lease and any floor levels must be specified.</p>	<p>As set out in Part IV of the Fourth Schedule.</p> <p>In the case of a conflict between this clause and the remainder of this Lease, then, for the purposes of registration, this clause shall prevail.</p>
<p><b>LR5. Prescribed Statements etc</b></p> <p>If this lease includes a statement falling within LR5.1 insert under that sub-clause the relevant statement or refer to the clause, schedule or paragraph of a schedule in this lease which contains the statement.</p> <p>In LR5.2 omit or delete those Acts which do not apply to this lease.</p>	<p><b>LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.</b></p> <p>None</p> <p><b>LR5.2 This lease is made under, or by reference to provisions of:</b> Housing Act 1985 and Housing Act 1988</p>
<p><b>LR6. Term for which the Property is leased</b></p> <p>Include only the appropriate statement (duly completed) from the three options.</p> <p>NOTE: The information you provide, or refer to, here will be used as part of the particulars to identify the lease under rule 6 of the Land Registration Rules 2003</p>	<p>The term as specified in this lease at Clause 1</p>
<p><b>LR7. Premium</b></p> <p>Specify the total premium, inclusive of any VAT where payable.</p>	<p>£</p>
<p><b>LR8. Prohibitions or restrictions on disposing of this lease</b></p> <p>Include whichever of the two statements is appropriate. Do not set out here the wording of the provision.</p>	<p>This lease contains a provision that prohibits or restricts dispositions.</p>



<p><b>LR9. Rights of acquisition etc</b></p> <p>Insert the relevant provisions in the sub-clauses or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</p>	<p><b>LR 9.1 Tenant’s contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land.</b></p> <p>None</p>
	<p><b>LR9.2 Tenant’s covenant to (or offer to) surrender this lease</b></p> <p>Clause 7</p> <p><b>LR9.3 Landlord’s contractual rights to acquire this lease.</b></p> <p>Clause 7</p>

<p><b>LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the property.</b></p> <p>Insert the relevant provisions or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</p>	<p>NONE</p>
<p><b>LR11. Easements</b></p> <p>Refer here only to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</p>	<p><b>LR11.1 Easements granted by this lease for the benefit of the Property.</b> SCHEDULE 1</p> <p><b>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property</b> SCHEDULE 2</p>
<p><b>LR12. Estate recharge burdening the Property</b></p> <p>Refer here to only to the clause, schedule or paragraph of a schedule in this lease which sets out the rent charge.</p>	<p>NONE</p>
<p><b>LR13. Application for standard form of restriction</b></p> <p>Set out the full text of the statement form of restriction and the title against which it is to be entered. If you wish to apply for more than one standard form of restriction use this clause to apply for each of them, tell us who is applying against which title and set out the full text of the restriction you are applying for.</p> <p>Standard forms of restriction are set out in Schedule 4 to the Land Registry Rules 2003.</p>	<p>NONE</p>
<p><b>LR14. Declaration of trust where there is more than one person comprising the Tenant.</b></p> <p>If the Tenant is one person, omit or delete all the alternative statements.</p> <p>If the Tenant is more than one person, complete this clause by omitting or deleting all inapplicable alternative statements.</p>	<p>The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants</p> <p><b>OR</b></p> <p>The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares</p> <p><b>OR</b></p> <p>The Tenant is more than one person. They are to hold the Property on trust <i>complete as necessary</i></p>

H M LAND REGISTRY

LAND REGISTRATION ACTS 1925 TO 1988

5 Year Discount Period Applies

County: - WEST YORKSHIRE - LEEDS DISTRICT

Title No: - (1)

Property - Flat No: (2)

**THIS LEASE** is made the (3) day of (4)

**B E T W E E N LEEDS CITY COUNCIL** (hereinafter called "the Council") of the one part and the person whose name and address is specified in Part I of the Fourth Schedule hereto (hereinafter called "the Tenant") of the other part

**W H E R E A S**

1. The Council is seised of the freehold land (hereinafter called "the Site") shown edged red on the plan annexed hereto (hereinafter called "the Plan") on which there is a block of flats (hereinafter called "the Building") described in Part II of the Fourth Schedule hereto
2. The Tenant is entitled under the Housing Act 1985 as amended by the Housing and Planning Act 1986 and the Leasehold Reform, Housing and Urban Development Act 1993 and the Housing Act 2004 (hereinafter called "the Act") to be granted a long lease of the property first hereinafter demised (hereinafter called "the Flat") situated in the Building and the garden (if any) secondly hereinafter demised (hereinafter called "the Garden") (All which premises hereinafter demised are hereinafter called "the demised premises")
3. The Tenant (as he hereby acknowledges) has been notified by the Council before the execution of the existence of the structural defects (if any) affecting the Building

**NOW THIS DEED WITNESSETH** as follows:-

1. In pursuance of the Act and in exercise of all other (if any) powers enabling it and in consideration of the price specified in Part III of the Fourth Schedule hereto paid to the Council by the Tenant (the receipt of which the Council hereby acknowledges) and of the rent and covenants by the Tenant hereinafter reserved and contained the Council **HEREBY DEMISES WITH FULL TITLE GUARANTEE** unto the Tenant **ALL THAT** the Flat as more particularly described in Part IV of the Fourth Schedule hereto **TOGETHER WITH** the easements and rights set out in the First Schedule hereto so far as the Council can lawfully grant the same but not further or otherwise **EXCEPT AND RESERVING** as set out in the Second Schedule hereto **TO HOLD** the same for the term of 125 years from the (5) day of (6) paying therefor during the said term the yearly rent of £10 by equal quarterly payments in advance on the 1st day of April the 1st day of July the 1st day of October and the 1st day of January in each year the first payment being a proportionate part of a quarter's rent for the period from the date hereof to the quarter day next following the date hereof to be made on the execution hereof
2. The Tenant hereby covenants with the Council:-
  - 2.1 To pay the said rent at the times and in manner aforesaid without any deduction

- 2.2 To pay all rates taxes assessments charges impositions and outgoings which may at any time during the said term be assessed charged or imposed on the demised premises or any part thereof or the owner or occupier in respect thereof
- 2.3
- 2.3.1 To pay to the Council the Service Charge contributions set out in the Third Schedule hereto respectively at the times and in the manner there set out subject to the limitations placed upon such payments by the Act and the Landlord and Tenant Act 1985 as amended
- 2.3.2 If any payment of or on account of Service Charge is not made on the due date for payment thereof for any reason including dispute as to the amount properly payable then to pay interest thereon from the due date until the date of payment as well after as before judgment upon the amount properly payable at a rate equal to 3% over the base rate for the time being of the National Westminster Bank plc or such other bank as may be the successor to the business of the said bank (hereinafter called "the specified rate")
- 2.4 To pay a fair proportion of the expense of repairing the party walls bounding the Flat and the party walls fences or hedges (if any) bounding the Garden
- 2.5
- 2.5.1 To keep the Flat and every part thereof (except any part which the Council is obliged to repair under clause 3 hereof) and all walls sewers drains pipes cables wires and appurtenances thereof and all fixtures and fittings therein and all additions thereto and the glass in the windows the fittings to the external windows and the fittings to the external doors thereof in good and tenantable repair and condition (including decorative repair) and in particular (but without prejudice to the generality of the foregoing) so as to provide shelter and support to the parts of the Building other than the Flat
- 2.5.2 To keep the Garden hereby demised (if any) neat and tidy and in good order and condition and properly cultivated as a garden and to keep the walls fences hedges and boundaries thereof (if any) in good repair and if there are any outbuildings thereon to keep the same in good repair
- 2.5.3 To clean the windows of the Flat as often as may be necessary
- 2.6
- 2.6.1 To permit the Council and its agents or licensees upon reasonable notice to enter the Flat to examine the state and condition thereof
- 2.6.2 To make good all defects decays or wants of repair of which notice in writing shall be given by the Council to the Tenant and for which the Tenant may be liable hereunder within two months of service of such notice
- 2.7
- 2.7.1 To permit the Council and its agents or licensees upon reasonable notice (except in emergency) to enter the Flat for the purpose of examining any part of the Building for the repair of which the Council is responsible or for the purpose of carrying out any works reasonably required for the performance of the Council's obligations under clause 3 hereof (the Council making good any damage caused thereby to the Flat) or for the purpose of making good (at the expense of the Tenant) any defects decays or wants of repair of which notice has been given under the foregoing

covenant and which the Tenant has not made good within two months of the service of such notice

2.7.2 To permit the tenants of other parts of the Building and their agents or licensees upon reasonable notice (except in emergency) to enter the demised premises for the purposes:

2.7.2.1 of carrying out any obligations of such tenants to the Council under covenants relating to other parts of the Building and similar to those herein contained

2.7.2.2 of repairing maintaining or renewing any easement enjoyed by such tenants over the demised premises

in either case causing as little damage as possible and making good all damage caused

2.8 Not to make any structural alterations or structural additions to the Flat or any alterations or additions which alter the external appearance of the Flat or remove any of the Council's fixtures and fittings without the previous consent in writing of the Council nor to build or erect anything in the Garden

2.9

2.9.1 Not to assign part only of the demised premises

2.9.2 Within one month after any transfer mortgage or charge of this lease or any underlease of the demised premises or any part thereof and every assignment of such underlease or any probate letters of administration court order or other instrument effecting or evidencing any devolution of title to this lease or any underlease to produce the same to the Council for registration and pay to the Council such registration fee as the Council shall reasonably demand

2.10 Forthwith after service upon the Tenant or occupier of the demised premises of any notice affecting the demised premises served by any person or body (other than the Council) to deliver a true copy thereof to the Council and if so required by the Council to join with the Council in making such representations to such person or body concerning any proposals affecting the demised premises as the Council may consider desirable and to join with the Council in any appeal against any order or direction affecting the demised premises as the Council may consider desirable

2.11 Upon receipt of any lawful notice order or direction from any competent authority affecting the demised premises requiring anything to be done or not done or any works to be executed to comply with the same at the Tenant's expense

2.12 To pay all costs charges and expenses incurred by the Council in abating any nuisance in the demised premises or executing any works necessary for that purpose

2.13 To pay all costs charges and expenses (including solicitor's costs and surveyor's fees) incurred by the Council for the purpose of or incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court

2.14 At the expiration or earlier determination of the said term peaceably to yield up the demised premises to the Council together with all additions thereto and all the Council's fixtures and fittings (if any) in good and tenantable repair and condition

2.15 Not to use or permit or suffer the Flat to be used for any purpose other than as a private dwelling house only

- 2.16 Not to do or permit or suffer to be done any act or thing which may be or become a nuisance or annoyance to the Council or to owners or occupiers of adjoining or neighbouring property
- 2.17 Not to keep any dog or other animal (including birds or reptiles) in the demised premises or the Building without the consent in writing of the Council
- 2.18 Not to hang clothing or other articles out of or on windows balconies or common parts of the Building or elsewhere than in areas (if any) designated by the Council for that purpose
- 2.19 Not to beat or shake carpets mops or other articles out of the windows of the Flat
- 2.20 Not to place flower boxes pots or other objects outside the windows of the Flat without the consent in writing of the Council
- 2.21 Not to obstruct any common parts of the Building or of the Site
- 2.22 Not to park any vehicle on the Site
- 2.23 To observe all reasonable regulations made by the Council from time to time controlling the exercise of any easements or rights granted with this lease
- 2.24 Not to use or play any radio television record player tape recorder or musical or other noise making instrument of any kind so as to be audible outside the Flat at any time to occupiers of any neighbouring property
- 2.25 Not to display any writing placard or advertisement at the Flat so as to be visible from outside
- 2.26 Not to erect any external wireless or television aerial without the consent in writing of the Council
- 2.27 Not to decorate any exterior part of the Flat without the consent in writing of the Council
- 2.28
  - 2.28.1 Not to do or permit or suffer to be done any act or thing which may render void or voidable any policy of insurance in respect of the Building or any part thereof or cause an increased premium to be payable in respect thereof
  - 2.28.2 Not to use or keep or permit or suffer to be used or kept in the Flat or the Building any inflammable materials liquids or gases other than those required for normal household use
  - 2.28.3 Not to use or keep or permit or suffer to be used or kept in the Flat any liquid petroleum gas or other bottled gas appliance
- 2.29
  - 2.29.1 If within a period of five years from the grant hereof there is a relevant disposal as defined by Section 159(1) and (2) of the Act which is not exempted by Section 160(1) and (2) of the Act of the whole or part of the Flat to pay to the Council on demand the amount specified in Section 155(2) and Section 155A and Section 155C of the Act but if there is more than one such disposal then only on the first disposal and for the purposes of this covenant the grant of an option enabling a person to call for such a disposal shall be treated as such a disposal
  - 2.29.2 It is hereby declared that the amount of the discount referred to in Section 155(2) and Section 155A and Section 155C of the Act upon the grant of this lease is the amount specified in Part V of the Fourth Schedule hereto

- 2.29.3 The liability that may arise under the covenant in paragraph 2.29.1 of this sub-clause shall be a charge on the demised premises in accordance with the provisions of Section 156(1) and (2) of the Act
- 2.30 To observe and perform such other reasonable regulations or restrictions as may be made from time to time by the Council for the management of the Site and/or the Building
3. The Council hereby covenants with the Tenant:-
- 3.1 That the Tenant paying the rent hereby reserved and observing and performing the several covenants on his part and the conditions herein contained shall peaceably hold and enjoy the demised premises during the said term without any interruption by the Council or any person rightfully claiming under or in trust for it
- 3.2 To keep in repair the structure and exterior of the Flat and the Building including drains gutters and external pipes external windows (including the frames but excluding the glass and fittings thereof and also excluding any internal double glazing frames) external doors (including the frames but excluding the fittings thereof) and to make good any defect affecting that structure
- 3.3 To keep in repair any other property over or in respect of which the Tenant has any rights under the First Schedule hereto
- 3.4 As often as may be reasonably necessary to paint in a good and workmanlike manner with at least two coats of good quality paint all outside parts of the Building usually painted and also all internal common parts (if any) of the Building usually painted
- 3.5 To ensure so far as practicable that any of the following services which are provided by the Council are maintained at a reasonable level namely:-
- 3.5.1 lighting cleaning and maintenance of common parts of the Building (if any)
- 3.5.2 maintenance of any landscaped areas on the Site
- 3.6 To rebuild or reinstate the Flat and the Building in the event of destruction or damage by fire tempest flood or any other cause against the risk of which it is normal practice to insure
4. **PROVIDED** always and it is hereby agreed and declared as follows:-
- 4.1 If the rent hereby reserved or any part thereof shall be unpaid for twenty-one days after becoming payable (whether formally demanded or not) or if any covenant on the part of the Tenant herein contained shall not be observed or performed then and in any such case it shall be lawful for the Council at any time thereafter to re-enter the demised premises or any part thereof in the name of the whole and thereupon this lease shall absolutely determine but without prejudice to any right of action or remedy of the Council in respect of any antecedent breach of any of the Tenant's covenants or the conditions herein contained
- 4.2 In this Lease unless the context otherwise requires:-
- 4.2.1 "the Council" includes the person for the time being entitled to the reversion immediately expectant on the determination of the term hereby granted
- 4.2.2 "the Tenant" includes the successors in title of the Tenant
- 4.2.3 the singular shall include the plural and vice versa
- 4.2.4 the masculine shall include the feminine

- 4.2.5 where the consent of the Council is required such consent shall be sought from the Director of Housing Services for the time being of the Council or such substituted officer appointed from time to time
- 4.3 Where the Tenant for the time being consists of two or more persons all covenants by the Tenant shall be deemed to be made by such persons jointly and severally
- 4.4 Nothing herein contained shall in any way affect or prejudice the powers and duties of the Council under the statutes for the time being in force in relation to Town and Country Planning and nothing done by the Council under any such statute shall be deemed to be construed to affect or prejudice the position powers rights or remedies of the Council as landlords under this lease
- 4.5 Section 196 of the Law of Property Act 1925 (as amended or re-enacted from time to time) shall apply to any notice under this lease
- 4.6 Any sums payable hereunder by the Tenant shall be deemed to be exclusive of Value Added Tax and the amount of any such tax payable thereon shall be paid by the Tenant to the Council
5. If the original grantees of this lease consist of two or more persons they hereby declare that they hold this lease upon the statutory trusts for sale and hold the net rents and profits until sale and the net proceeds of sale upon trust for themselves as joint tenants beneficially
6. The Council and the Tenant hereby jointly apply to the Registrar to enter on the Register of the title of the property hereby demised the said charge referred to in Clause 2.29.3 hereof and such of the rights exceptions reservations covenants and other matters herein contained as are capable of registration
7. The Tenant for himself and his successors in title hereby covenants with the Council that no transfer or lease of the demised premises by the proprietor of the demised premises or by the proprietor of any charge registered against the demised premises is to be completed by registration unless made in accordance with section 156A of the Act.
8. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or series of transactions in respect of which the amount of value or aggregate amount or value of the consideration other than rent exceeds £125,000 (One Hundred and Twenty Five Thousand Pounds)
9. The Council and the Tenant hereby certify that there is no agreement for lease to which this lease give effect

**IN WITNESS** whereof the Council has set its Common Seal upon this instrument as a Deed and the Tenant has signed this instrument as a Deed in the presence of the person mentioned below the day and year first before written



## FIRST SCHEDULE

The demised premises are granted with the following rights exercisable by the Tenant his agents or licensees at all reasonable times and for all purposes connected with the use of the demised premises in accordance with the terms of this lease in common with the Council and all others entitled to exercise any such rights and in accordance with any regulations from time to time concerning the exercise of the same

1. The right of subjacent and lateral support for the Flat from other parts of the Building
2. Full right of way on foot over such parts of the Building as afford access to the Flat (if any)
3. Full right of way on foot over the access path coloured green on the Plan
4. The free passage and running of water gas or other piped fuel sewage smoke or fumes through the pipes sewers drains vents or passages serving the demised premises
5. The right to the use and maintenance of the cables or other installations serving the Flat for the supply of electricity and for the telephone or for the receipt directly or by landline of visual or other wireless transmissions to the Flat
6. The right to place and maintain one properly maintained dustbin in the dustbin area within the Site
7. The right to use the landscaped areas (if any) hatched blue on the Plan for amenity purposes only
8. The right at reasonable times and upon reasonable notice (except in emergency) to enter other parts of the Building and/or the Site not hereby demised for the purpose of complying with the Tenant's obligations hereunder or of repairing maintaining or renewing any easement enjoyed by the Tenant over such other parts of the Building and/or the Site the Tenant in any such case causing as little disturbance as possible and making good all damage caused

**PROVIDED ALWAYS** that each of the foregoing easements and rights is conditional upon the performance and observance by the Tenant of his obligations under this lease

## SECOND SCHEDULE

### (Easements and Rights Reserved)

The following easements and rights are reserved from the term hereby granted for the benefit of the Council and the tenants or occupiers of the parts of the Building to which the same are appurtenant

1. The right of subjacent and lateral support provided by the Flat for other parts of the Building
2. The free passage and running of water gas or other piped fuel sewage smoke or fumes through the pipes sewers drains vents or passages within the demised premises but serving other parts of the Building
3. The right to the use and maintenance of cables or other installations for the supply of electricity and for the telephone or for the receipt directly or by landline of visual or other wireless transmissions so far as such cables or other installations are within the demised premises but serve other parts of the Building and/or the Site

4. All other easements quasi-easements rights and privileges now appurtenant to any other part of the Building and/or the Site and enjoyed over or in respect of the demised premises
5. The right for the Council and tenants of other parts of the Building and their agents or licensees at all reasonable times upon reasonable notice (except in emergency) to enter the demised premises or any part thereof for the purposes:-
  - 5.1 of inspecting repairing maintaining decorating cleaning (including window cleaning) and renewing any part or parts of the Building and/or the Site not hereby demised
  - 5.2 of complying with their respective obligations hereunder or under covenants relating to other parts of the Building and similar to those herein contained
  - 5.3 of repairing maintaining or renewing any easement enjoyed by the Council or such tenants over the demised premises and to place and retain on the demised premises or any part thereof ladders scaffolding and other apparatus and materials necessary for the purposes referred to in 5.1 5.2 and 5.3 above causing as little disturbance as possible and making good all damage caused
6. The right for the Council and its agents and licensees and any statutory undertakers to enter upon the demised premises or any part thereof for the purpose of constructing installing inspecting repairing renewing maintaining and removing pipes conduits wires cables and any other conducting media subject to their making good all damage in the exercise of such right except insofar as such entry may be necessitated by any act or default of the Tenant
7. All other (if any) rights reserved to the Council by or under statute or otherwise

**THIRD SCHEDULE  
ANNUAL SERVICE CHARGE**

1.
  - 1.1 In this Schedule "year" means a year beginning on 1st April and ending on 31st March
  - 1.2 Time shall not be of the essence for service of any notice under this Schedule
2.
  - 2.1 Before the commencement of each year (except the year in which this lease is granted) the Council shall make a reasonable estimate of the amount which will be payable by the Tenant by way of Service Charge (as hereinafter defined) in that year and shall notify the Tenant of that estimate
  - 2.2 The Tenant shall pay to the Council in advance on account of Service Charge the amount of such estimate by equal quarterly payments on 1st April 1st July 1st October and 1st January in each year
3. In respect of the year in which this lease is granted
  - 3.1 As soon as practicable after the grant of this lease the Council shall make a reasonable estimate of the amount which will be payable by way of Service Charge in respect of the period from the date hereof to the end of that year and shall notify the Tenant of that estimate
  - 3.2 If such notification is given to the Tenant prior to the 1st January in that year the Tenant shall pay to the Council in advance on account of Service Charge on each of the said quarter days thereafter until the end of that year such part of the amount estimated as aforesaid as the Council shall specify in such notification

- 3.3 If such notification is given to the Tenant after the 1st January in that year the Tenant shall pay to the Council on the service of such notification the amount estimated as aforesaid
- 3.4 The Service Charge shall be apportioned by time for the portion of a year from the grant hereof to the end of that year
- 4. 4.1 As soon as practicable after the end of each year the Council shall ascertain the Service Charge payable for that year and shall notify the Tenant of the amount thereof
- 4.2 Such notice shall contain or be accompanied by a summary of the costs and expenses incurred by the Council under paragraph 7 of this Schedule and state the balance (if any) due under paragraph 5 of this Schedule
- 5. 5.1 If the Service Charge for the year exceeds the amount paid in advance under paragraph 2 or 3 of this Schedule the Tenant shall pay the balance thereof to the Council within one month of service of the said notice
- 5.2 If the amount so paid in advance by the Tenant exceeds the Service Charge for the year the balance shall be credited against the next advance payment or payments due from the Tenant (or if this lease has then determined be repaid to the Tenant)
- 6. 6.1 The Service Charge payable by the Tenant shall be a fair proportion of the costs and expenses set out in paragraph 7 of this Schedule incurred in the year
- 6.2 The Council may adopt any reasonable method of ascertaining the said proportion and may adopt different methods in relation to different items of costs and expenses
- 7. The said costs and expenses are all costs and expenses of or incidental to:
  - 7.1 The carrying out of all works required by sub-clauses 3.2 to 3.4 inclusive of this lease
  - 7.2 Providing the services specified in sub-clause 3.5 of this lease
  - 7.3 Any insurance costs and expenses the Council may incur to meet its obligations under sub-clause 3.6 of this lease whether by the payments of premiums or by the making of contributions to the Council's internal fund for insurance of the Council's housing property or by any other way whatsoever **PROVIDED THAT** the Tenant shall be entitled to inspect the relevant policy if any at such reasonable times as may be arranged with the Council's Director of Legal and Democratic Services.
  - 7.4 All rates and taxes charged or imposed upon or in respect of the Building or any part thereof or the Site or any part thereof and not the liability of the Tenant or any other tenant or occupier of the Building or the Site
  - 7.5 Any insurance costs and expenses the Council may incur in respect of liability to the Tenant or others in respect of the Building or the Site or against risks involving repairs to the Building whether by the payment of premiums or by the making of contributions to the Council's internal fund for insurance of the Council's housing property or by any other way whatever **PROVIDED THAT** the Tenant shall be entitled to inspect the relevant policy if any at such reasonable times as may be arranged with the Council's Director of Legal and Democratic Services
  - 7.6 The maintenance and management of the Building and the Site
  - 7.7 The employment of any managing agents appointed by the Council in respect of the Building or the Site or any part thereof Provided that if no managing agents are so

employed then the Council may add a reasonable sum for the Council's costs of management of the Building or the Site or any part thereof

7.8 Any other costs and expenses reasonably incurred by the Council in respect of the Building or the Site or any part thereof including the costs and expenses of any improvements to the Building and/or the Site whether incurred in consequence of complying with the provisions of the Act or any other legislation or otherwise howsoever incurred

8. The summary of costs and expenses referred to in paragraph 4 of this Schedule shall contain an explanation of the manner in which the proportion of those costs and expenses apportioned to the demised premises under paragraph 6 of this Schedule has been calculated

9. Moneys paid under paragraph 2.2 of this Schedule shall become part of the funds of the Council and shall not be impressed with any trust requiring them to be set aside as a separate fund for any particular purpose

**FOURTH SCHEDULE**

**PART I**

**(NAME AND ADDRESS OF THE TENANT)**

(7)

**PART II**

**(DESCRIPTION OF THE BUILDING)**

**ALL THAT** block of flats known as (8)

**PART III**

**(PRICE)**

(9)

**PART IV**

**(DESCRIPTION OF DEMISED PREMISES)**

**FIRST ALL THAT** flat known as flat number (10) on the [**ground/first**] floor of that part of the Building coloured red on the Plan Together with [**the ground floor entrance and staircase leading thereto and**] the store room (if any) on the ground floor of the Building coloured brown on the Plan and including the ceilings and floors of the Flat the internal plaster and faces of the exterior walls of the Flat the internal walls of the Flat (but internal walls bounding the Flat shall be party walls severed medially) but excluding exterior walls roof foundations and other main structural parts of the Building **AND SECONDLY ALL THAT** garden area (if any) coloured blue on the Plan annexed hereto Together with the outbuildings thereon (if any) And Together with the walls fences hedges or boundaries marked with the letter "T" inwards on the Plan (if any) (the walls fences hedges or boundaries indicated by a double letter "T" inwards and outwards (if any) on the Plan shall be party structures and shall be maintained and repaired accordingly)

**PART V**

**(DISCOUNT)**

(11)

**EXECUTED BY THE COUNCIL AS A DEED (BUT NOT DELIVERED UNTIL THE DATE HEREOF)**

**THE COMMON SEAL OF LEEDS CITY COUNCIL** was  
hereunto affixed in the presence of:-

Assistant Chief Executive (Corporate Governance)

**SIGNED AND DELIVERED** as a Deed by  
the Tenant in the presence of:-

Name of Witness

Address

Occupation

DATED

**HOUSING ACT 1985**

**LEEDS CITY COUNCIL**

**-to-**

**(12)**

**LEASE**

of premises know as Flat Number (13) in the City of Leeds

NICOLÉ JACKSON  
Director of Legal and Democratic Services Civic  
Hall  
LEEDS  
LS1 1UR

## WALK UP LEASE

<p><b>LR1. Date of Lease</b></p>	
<p><b>LR2. Title Number(s)</b></p>	<p><b>LR2.1 Landlord's title number(s)</b> Title number(s) out of which this lease is granted. Leave blank if not registered.</p> <p><b>LR2.2 Other title numbers</b> Existing title number(s) against which entries of matters referred to in LR9, LR10, LR11 and LR13 are to be made</p>
<p><b>LR3. Parties to this lease</b></p> <p>Give the full names, addresses of each of the parties.</p>	<p><b>Landlord</b> LEEDS CITY COUNCIL Civic Hall, Leeds, LS1 1UR</p> <p><b>Tenant</b></p>
<p><b>LR4. Property</b></p> <p>Insert a full description of the land being leased Or Refer to the clause, schedule or paragraph of a schedule in this lease in which the land being leased is more fully described.</p> <p>Where there is a letting of part of a registered title, a plan must be attached to this lease and any floor levels must be specified.</p>	<p>As defined in Clause 1.1 of the Supplemental Lease.</p> <p>In the case of a conflict between this clause and the remainder of this Lease, then, for the purposes of registration, this clause shall prevail.</p>
<p><b>LR5. Prescribed Statements etc</b></p> <p>If this lease includes a statement falling within LR5.1 insert under that sub-clause the relevant statement or refer to the clause, schedule or paragraph of a schedule in this lease which contains the statement.</p> <p>In LR5.2 omit or delete those Acts which do not apply to this lease.</p>	<p><b>LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.</b></p> <p>None</p> <p><b>LR5.2 This lease is made under, or by reference to provisions of:</b> Housing Act 1985 and Housing Act 1988</p>
<p><b>LR6. Term for which the Property is leased</b></p> <p>Include only the appropriate statement (duly completed) from the three options.</p> <p>NOTE: The information you provide, or refer to, here will be used as part of the particulars to identify the lease under rule 6 of the Land Registration Rules 2003</p>	<p>The term as specified in this lease at Clause 1</p>
<p><b>LR7. Premium</b></p> <p>Specify the total premium, inclusive of any VAT where payable.</p>	<p>£</p>



<p><b>LR8. Prohibitions or restrictions on disposing of this lease</b></p> <p>Include whichever of the two statements is appropriate. Do not set out here the wording of the provision.</p>	<p>This lease contains a provision that prohibits or restricts dispositions.</p>
<p><b>LR9. Rights of acquisition etc</b></p> <p>Insert the relevant provisions in the sub-clauses or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</p>	<p><b>LR 9.1 Tenant’s contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land.</b> None</p> <p><b>LR9.2 Tenant’s covenant to (or offer to) surrender this lease</b> Clause 7</p> <p><b>LR9.3 Landlord’s contractual rights to acquire this lease.</b> Clause 7</p>
<p><b>LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the property.</b></p> <p>Insert the relevant provisions or refer to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</p>	<p>NONE</p>
<p><b>LR11. Easements</b></p> <p>Refer here only to the clause, schedule or paragraph of a schedule in this lease which contains the provisions.</p>	<p><b>LR11.1 Easements granted by this lease for the benefit of the Property.</b> SCHEDULE 1</p> <p><b>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property</b> SCHEDULE 2</p>
<p><b>LR12. Estate recharge burdening the Property</b></p> <p>Refer here to only to the clause, schedule or paragraph of a schedule in this lease which sets out the rent charge.</p>	<p>NONE</p>
<p><b>LR13. Application for standard form of restriction</b></p> <p>Set out the full text of the statement form of restriction and the title against which it is to be entered. If you wish to apply for more than one standard form of restriction use this clause to apply for each of them, tell us who is applying against which title and set out the full text of the restriction you are applying for.</p> <p>Standard forms of restriction are set out in Schedule 4 to the Land Registry Rules 2003.</p>	<p>NONE</p>

**LR14. Declaration of trust where there is more than one person comprising the Tenant.**

If the Tenant is one person, omit or delete all the alternative statements.

If the Tenant is more than one person, complete this clause by omitting or deleting all inapplicable alternative statements.

The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants

**OR**

The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares

**OR**

The Tenant is more than one person. They are to hold the Property on trust *complete as necessary*

**H M LAND REGISTRY**

**LAND REGISTRATION ACTS 1925 TO 1988**

**5 Year Discount Period Applies**

County: - **WEST YORKSHIRE - LEEDS DISTRICT**

Title No: -

Property - Flat No:

**THIS LEASE** is made the                      day of

**B E T W E E N LEEDS CITY COUNCIL** (hereinafter called "the Council") of the one part and the person whose name and address is specified in Part I of the Fourth Schedule hereto (hereinafter called "the Tenant") of the other part

**W H E R E A S**

1. The Council is seised of the freehold land (hereinafter called "the Site") shown edged red on the Plan annexed hereto (hereinafter called "Plan No. 1") on which there are block(s) of flats
2. The Tenant is entitled under the Housing Act 1985 as amended by the Housing and Planning Act 1986 and the Leasehold Reform, Housing and Urban Development Act 1993 and the Housing Act 2004 (hereinafter called "the Act") to be granted a long lease of the property hereinafter demised (hereinafter called "the Flat") situated in the Building described in Part II of the Fourth Schedule hereto (hereinafter called "the Building")
3. The Tenant (as he hereby acknowledges) has been notified by the Council before the execution hereof of the existence of the structural defects (if any) affecting the Building

**NOW THIS DEED WITNESSETH** as follows:-

1. In pursuance of the Act and in exercise of all other (if any) powers enabling it and in consideration of the price specified in Part III of the Fourth Schedule hereto paid to the Council by the Tenant (the receipt of which the Council hereby acknowledges) and of the rent and covenants by the Tenant hereinafter reserved and contained the Council **HEREBY DEMISES WITH FULL TITLE GUARANTEE** unto the Tenant **ALL THAT** the Flat as more particularly described in Part IV of the Fourth Schedule hereto **TOGETHER WITH** the easement and rights set out in the First Schedule hereto so far as the Council can lawfully grant the same but not further or otherwise **EXCEPTING AND RESERVING** as set out in the Second Schedule hereto **TO HOLD** the same for the term of 125 years from the 29th day of July 1991 paying therefor during the said term the yearly rent of £10 by equal quarterly payments in advance on the 1st day of April the 1st day of July the 1st day of October and the 1st day of January in each year the first payment being a proportionate part of a quarter's rent for the period from the date hereof to the quarter day next following the date hereof to be made on the execution hereof
2. The Tenant hereby covenants with the Council:-
  - 2.1 To pay the said rent at the times and in manner aforesaid without any deduction

- 2.2 To pay all rates taxes assessments charges impositions and outgoings which may at any time during the said term be assessed charged or imposed on the Flat or any part thereof or the owner or occupier in respect thereof
- 2.3
- 2.3.1 To pay to the Council the Service Charge contributions set out in the Third Schedule hereto respectively at the times and in the manner there set out subject to the limitations placed upon such payments by the Act and the Landlord and Tenant Act 1985 as amended
- 2.3.2 If any payment of or on account of Service Charge is not made on the due date for payment thereof for any reason including dispute as to the amount properly payable then to pay interest thereon from the due date until the date of payment as well after as before judgment upon the amount properly payable at a rate equal to 3% over the base rate for the time being of the National Westminster Bank or such other bank as may be the successor to the business of the said bank (hereinafter called "the specified rate")
- 2.4 To pay a fair proportion of the expense of repairing the party walls bounding the Flat
- 2.5
- 2.5.1 To keep the Flat and every part thereof (except any part which the Council is obliged to repair under clause 3 hereof) and all walls sewers drains pipes cables wires and appurtenances thereof and all fixtures and fittings therein and all additions thereto and the glass in the windows the fittings to the external windows and the fittings to the external doors thereof in good and tenable repair and condition (including decorative repair) and in particular (but without prejudice to the generality of the foregoing) so as to provide shelter and support to the parts of the Building other than the Flat
- 2.5.2 To clean the windows of the Flat as often as may be necessary
- 2.6
- 2.6.1 To permit the Council and its agents or licensees upon reasonable notice to enter the Flat to examine the state and condition thereof
- 2.6.2 To make good all defects decays or wants of repair of which notice in writing shall be given by the Council to the Tenant and for which the Tenant may be liable hereunder within two months of service of such notice
- 2.7
- 2.7.1 To permit the Council and its agents or licensees upon reasonable notice (except in emergency) to enter the Flat for the purpose of examining any part of the Building for the repair of which the Council is responsible or for the purpose of carrying out any works reasonably required for the performance of the Council's obligations under clause 3 hereof (the Council making good any damage caused thereby to the Flat) or for the purpose of making good (at the expense of the Tenant) any defects decays or wants of repair of which notice has been given under the foregoing covenant and which the Tenant has not made good within two months of the service of such notice

- 2.7.2 To permit the tenants of other parts of the Building and their agents or licensees upon reasonable notice (except in emergency) to enter the Flat for the purposes:
- 2.7.2.1 of carrying out any obligations of such tenants to the Council under covenants relating to other parts of the Building and similar to those herein contained
  - 2.7.2.2 of repairing maintaining or renewing any easement enjoyed by such tenants over the Flat in either case causing as little damage as possible and making good all damage caused
- 2.8 Not to make any structural alterations or structural additions to the Flat or any alterations or additions which alter the external appearance of the Flat or remove any of the Council's fixtures and fittings without the previous consent in writing of the Council
- 2.9
- 2.9.1 Not to assign part only of the Flat
  - 2.9.2 Within one month after any transfer mortgage or charge of this lease or any underlease of the Flat or any part thereof and every assignment of such underlease or any probate letters of administration Court Order or other instrument effecting or evidencing any devolution of title to this lease or any underlease to produce the same to the Council for registration and pay to the Council such registration fee as the Council shall reasonably demand
- 2.10 Forthwith after service upon the Tenant or occupier of the Flat of any notice affecting the Flat served by any person or body (other than the Council) to deliver a true copy thereof to the Council and if so required by the Council to join with the Council in making such representations to such person or body concerning any proposals affecting the Flat as the Council may consider desirable and to join with the Council in any appeal against any order or direction affecting the Flat as the Council may consider desirable
- 2.11 Upon receipt of any lawful notice order or direction from any competent authority affecting the Flat requiring anything to be done or not done or any works to be executed to comply with the same at the Tenant's expense
- 2.12 To pay all costs charges and expenses incurred by the Council in abating any nuisance in the Flat or executing any works necessary for that purpose
- 2.13 To pay all costs and expenses (including solicitor's costs and surveyor's fees) incurred by the Council for the purpose of or incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court
- 2.14 At the expiration or earlier determination of the said term peaceably to yield up the Flat to the Council together with all additions thereto and all the Council's fixtures and fittings (if any) in good and tenantable repair and condition
- 2.15 Not to use or permit or suffer the Flat to be used for any purpose other than as a private dwelling house only
- 2.16 Not to do or permit or suffer to be done any act or thing which may be or become a nuisance or annoyance to the Council or to owners or occupiers of adjoining or neighbouring property

- 2.17 Not to keep any dog or other animal (including birds or reptiles) in the Flat or the Building without the consent in writing of the Council
- 2.18 Not to hang clothing or other articles out of or on windows balconies or common parts of the Building or elsewhere than in areas (if any) designated by the Council for that purpose
- 2.19 Not to beat or shake carpets mops or other articles out of the windows of the Flat
- 2.20 Not to place flower boxes pots or other objects outside the windows of the Flat without the consent in writing of the Council
- 2.21 Not to obstruct any common parts of the Building or of the Site
- 2.22 Not to park any vehicle on the Site
- 2.23 To observe all reasonable regulations made by the Council from time to time controlling the exercise of any easements or rights granted with this lease
- 2.24 Not to use or play any radio television record player tape recorder or musical or other noise making instrument of any kind so as to be audible outside the Flat at any time to occupiers of any neighbouring property
- 2.25 Not to display any writing placard or advertisement at the Flat so as to be visible from outside
- 2.26 Not to erect any external wireless or television aerial without the consent in writing of the Council
- 2.27 Not to decorate any exterior part of the Flat without the consent in writing of the Council
- 2.28
  - 2.28.1 Not to do or permit or suffer to be done any act or thing which may render void or voidable any policy of insurance in respect of the Building or any part thereof or cause an increased premium to be payable in respect thereof
  - 2.28.2 Not to use or keep or permit or suffer to be used or kept in the Flat or the Building any inflammable materials liquids or gases other than those required for normal household use
  - 2.28.3 Not to use or keep or permit or suffer to be used or kept in the Flat any liquid petroleum gas or other bottled gas appliance
- 2.29
  - 2.29.1 If within a period of five years from the grant hereof there is a relevant disposal as defined by Section 159(1) and (2) of the Act which is not exempted by Section 160(1) and (2) of the Act of the whole or part of the Flat to pay to the Council on demand the amount specified in Section 155(2) and Section 155A and Section 155C of the Act but if there is more than one such disposal then on the first disposal and for the purposes of this covenant the grant of an option enabling a person to call for such a disposal shall be treated as such a disposal
  - 2.29.2 It is hereby declared that the amount of the discount referred to in Section 155(2) and Section 155A and Section 155C of the Act upon the grant of this lease is the amount specified in Part V of the Fourth Schedule hereto

- 2.29.3 The liability that may arise under the covenant in paragraph 1 of this sub-clause shall be a charge on the Flat in accordance with the provisions of Section 156(1) and (2) of the Act
- 2.30 To observe and perform such other reasonable regulations or restrictions as may be made from time to time by the Council for the management of the Site and/or the Building
3. The Council hereby covenants with the Tenant:-
- 3.1 That the Tenant paying the rent hereby reserved and observing and performing the several covenants on his part and the conditions herein contained shall peaceably hold and enjoy the Flat during the said term without any interruption by the Council or any person rightfully claiming under or in trust for it
- 3.2 To keep in repair the structure and exterior of the Flat and the Building including drains gutters and external pipes external windows (including the frames but excluding the glass and fittings thereof and also excluding any internal double glazing frames) external doors (including the frames but excluding the fittings thereof) and to make good any defect affecting that structure
- 3.3 To keep in repair any other property over or in respect of which the Tenant has any rights under the First Schedule hereto
- 3.4 As often as may be reasonably necessary to paint in a good and workmanlike manner with at least two coats of good quality paint all outside parts of the Building usually painted and also all internal common parts (if any) of the Building usually painted
- 3.5 To ensure so far as practicable that any of the following services and equipment which are provided by the Council to or for the Flat are maintained at a reasonable level and to keep in repair and renew where necessary such equipment and any installation connected with the provision of those services and equipment namely:-
- 3.5.1 in the Building
- 3.5.1.1 window cleaning of the common parts
- 3.5.1.2 lighting cleaning and maintenance of common parts
- 3.5.1.3 collection and/or disposal of refuse
- 3.5.1.4 controlled entry system
- 3.5.1.5 maintenance of common television aerial or landline
- 3.5.2 lighting cleaning and maintenance of landscaped areas on the Site
- 3.6 To rebuild or reinstate the Flat and the Building in the event of destruction or damage by fire tempest flood or any other cause against the risk of which it is normal practice to insure
4. **PROVIDED** always and it is hereby agreed and declared as follows:-
- 4.1 If the rent hereby reserved or any part thereof shall be unpaid for twenty-one days after becoming payable (whether formally demanded or not) or if any covenant on the part of the Tenant herein contained shall not be observed or performed then and in any such case it shall be lawful for the Council at any time thereafter to re-enter the Flat or any part thereof in the name of the whole and thereupon this lease shall absolutely determine but without prejudice

to any right of action or remedy of the Council in respect of any antecedent breach of any of the Tenant's covenants or the conditions herein contained

- 4.2 In this Lease unless the context otherwise requires:-
- 4.2.1 "the Council" includes the person for the time being entitled to the reversion immediately expectant on the determination of the term hereby granted
  - 4.2.2 "the Tenant" includes the successors in title of the Tenant
  - 4.2.3 the singular shall include the plural and vice versa
  - 4.2.4 the masculine shall include the feminine
  - 4.2.5 where the consent of the Council is required such consent shall be sought from the Director of Housing Services for the time being of the Council or such substituted officer appointed from time to time
- 4.3 Where the Tenant for the time being consists of two or more persons all covenants by the Tenant shall be deemed to be made by such persons jointly and severally
- 4.4 Nothing herein contained shall in any way affect or prejudice the powers and duties of the Council under the statutes for the time being in force in relation to Town and Country Planning and nothing done by the Council under any such statute for the time being shall be deemed to be construed to affect or prejudice the position powers rights or remedies of the Council as landlords under this lease
- 4.5 Section 196 of the Law of Property Act 1925 (as amended or re-enacted from time to time) shall apply to any notice under this lease
- 4.6 Any sums payable hereunder by the Tenant shall be deemed to be exclusive of Value Added Tax and the amount of any such tax payable thereon shall be paid by the Tenant to the Council
5. If the original grantees of this Lease consist of two or more persons they hereby declare that they hold this lease upon the statutory trusts for sale and hold the net rents and profits until sale and the net proceeds of sale upon trust for themselves as joint tenants beneficially
6. The Council and the Tenant hereby jointly apply to the Registrar to enter on the Register of the title of the Flat the said charge referred to in Clause 2.29.3 hereof and such of the rights exceptions reservations covenants and other matters herein contained as are capable of registration
7. The Tenant for himself and his successors in title hereby covenants with the Council that no transfer or lease of the demised premises by the proprietor of the demised premises or by the proprietor of any charge registered against the demised premises is to be completed by registration unless made in accordance with section 156A of the Act.
8. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or series of transactions in respect of which the amount of value or aggregate amount or value of the consideration other than rent exceeds £125,000 (One Hundred and Twenty Five Thousand Pounds)
9. The Council and the Tenant hereby certify that there is no agreement for lease to which this lease give effect



**IN WITNESS** whereof the Council has set its Common Seal upon this instrument as a deed and the Tenant has signed this instrument as a deed in the presence of the person mentioned below the day and year first before written

### **FIRST SCHEDULE**

The Flat is granted with the following rights exercisable by the Tenant his agents or licensees at all reasonable times and for all purposes connected with the use of the Flat in accordance with the terms of this lease in common with the Council and all others entitled to exercise any such rights and in accordance with any regulations from time to time concerning the exercise of the same

1. The right of subjacent and lateral support for the Flat from other parts of the Building
2. Full right of way on foot over such parts of the Building as afford access to the Flat
3. Full right of way on foot over the access path coloured green on Plan No 1
4. The free passage and running of water gas or other piped fuel sewage smoke or fumes through the pipes sewers drains vents or passages serving the Flat
5. The right to the use and maintenance of the cables or other installations serving the Flat for the supply of electricity and for the telephone or for the receipt directly or by landline of visual or other wireless transmissions to the Flat
6. The right to use the landscaped areas hatched blue on Plan No 1 for amenity purposes only
7. The right at reasonable times and upon reasonable notice (except in emergency) to enter other parts of the Building and/or the Site not hereby demised for the purpose of complying with the Tenant's obligations hereunder or of repairing maintaining or renewing any easement enjoyed by the Tenant over such other parts of the Building and/or the Site the Tenant in any such case causing as little disturbance as possible and making good all damage caused

**PROVIDED ALWAYS** that each of the foregoing easements and rights is conditional upon the performance and observance by the Tenant of his obligations under this lease

### **SECOND SCHEDULE**

#### **Easements and Rights Reserved**

The following easements and rights are reserved from the term hereby granted for the benefit of the Council and the tenants or occupiers of the parts of the Building to which the same are appurtenant

1. The right of subjacent and lateral support provided by the Flat for other parts of the Building
2. The free passage and running of water gas or other piped fuel sewage smoke or fumes through the pipes sewers drains vents or passages within the Flat but serving other parts of the Building
3. The right to the use and maintenance of cables or other installations for the supply of electricity and for the telephone or for the receipt directly or by landline of visual or other

wireless transmissions so far as such cables or other installations are within the Flat but serve other parts of the Building and/or the Site

4. All other easements quasi-easements rights and privileges now appurtenant to any other part of the Building and/or the Site and enjoyed over or in respect of the Flat
5. The right for the Council and tenants of other parts of the Building and their agents or licensees at all reasonable times upon reasonable notice (except in emergency) to enter the Flat or any part thereof for the purposes:-
  - 5.1 of inspecting repairing maintaining decorating cleaning (including window cleaning) and renewing any part or parts of the Building and/or the Site not hereby demised
  - 5.2 of complying with their respective obligations hereunder or under covenants relating to other parts of the Building and similar to those herein contained
  - 5.3 of repairing maintaining or renewing any easement enjoyed by the Council or such tenants over the Flat and to place and retain on the Flat or any part thereof ladders scaffolding and other apparatus and materials necessary for the purposes referred to in 5.1 5.2 and 5.3 above causing as little disturbance as possible and making good all damage caused
6. The right for the Council and its agents and licensees and any statutory undertakers to enter upon the Flat or any part thereof for the purpose of constructing installing inspecting repairing renewing maintaining and removing pipes conduits wires cables and any other conducting media subject to their making good all damage in the exercise of such right except insofar as such entry may be necessitated by any act or default of the Tenant
7. All other (if any) rights reserved to the Council by or under statute or otherwise

### **THIRD SCHEDULE**

#### **ANNUAL SERVICE CHARGE**

1.
  - 1.1 In this Schedule "year" means a year beginning on 1st April and ending on 31st March
  - 1.2 Time shall not be of the essence for service of any notice under this Schedule
2.
  - 2.1 Before the commencement of each year (except the year in which this lease is granted) the Council shall make a reasonable estimate of the amount which will be payable by the Tenant by way of Service Charge (as hereinafter defined) in that year and shall notify the Tenant of that estimate
  - 2.2 The Tenant shall pay to the Council in advance on account of Service Charge the amount of such estimate by equal quarterly payments on 1st April 1st July 1st October and 1st January in each year
3. In respect of the year in which this lease is granted
  - 3.1 As soon as practicable after the grant of this lease the Council shall make a reasonable estimate of the amount which will be payable by way of Service Charge in respect of the period from the date hereof to the end of that year and shall notify the Tenant of that estimate

- 3.2 If such notification is given to the Tenant prior to the 1st January in that year the Tenant shall pay to the Council in advance on account of Service Charge on each of the said quarter days thereafter until the end of that year such part of the amount estimated as aforesaid as the Council shall specify in such notification
- 3.3 If such notification is given to the Tenant after the 1st January in that year the Tenant shall pay to the Council on the service of such notification the amount estimated as aforesaid
- 3.4 The Service Charge shall be apportioned by time for the portion of a year from the grant hereof to the end of that year
4. 4.1 As soon as practicable after the end of each year the Council shall ascertain the Service Charge payable for that year and shall notify the Tenant of the amount thereof
- 4.2 Such notice shall contain or be accompanied by a summary of the costs and expenses incurred by the Council under paragraph 7 of this Schedule and state the balance (if any) due under paragraph 5 of this Schedule
5. 5.1 If the Service Charge for the year exceeds the amount paid in advance under paragraph 2 or 3 of this Schedule the Tenant shall pay the balance thereof to the Council within one month of service of the said notice
- 5.2 If the amount so paid in advance by the Tenant exceeds the Service Charge for the year the balance shall be credited against the next advance payment or payments due from the Tenant (or if this lease has then determined be repaid to the Tenant)
6. 6.1 The Service Charge payable by the Tenant shall be a fair proportion of the costs and expenses set out in paragraph 7 of this Schedule incurred in the year
- 6.2 The Council may adopt any reasonable method of ascertaining the said proportion and may adopt different methods in relation to different items of costs and expenses
7. The said costs and expenses are all costs and expenses of or incidental to:
  - 7.1 The carrying out of all works required by sub-clauses 3.2 to 3.5 inclusive of this lease
  - 7.2 Providing the services and equipment specified in sub-clause 3.5 of this lease
  - 7.3 Any insurance costs and expenses the Council may incur to meet its obligations under sub-clause 3.6 of this lease whether by the payment of premiums or by the making of contributions to the Council's internal fund for insurance of the Council's housing property or by any other way whatsoever **PROVIDED THAT** the Tenant shall be entitled to inspect the relevant policy if any at such reasonable times as may be arranged with the Council
  - 7.4 All rates and taxes charged or imposed upon or in respect of the Building or any part thereof or the Site or any part thereof and not the liability of the Tenant or any other tenant or occupier of the Building or the Site
  - 7.5 Any insurance costs and expenses the Council may incur in respect of liability to the Tenant or others in respect of the Building or the Site or against risks involving repairs to the Building whether by the payment of premiums or by the making of contributions to the Council's internal fund for insurance of the Council's housing property or by any other way whatever **PROVIDED THAT** the Tenant shall be entitled to

inspect the relevant policy if any at such reasonable times as may be arranged with the Council

- 7.6 The maintenance and management of the Building and the Site
  - 7.7 The employment of any managing agents appointed by the Council in respect of the Building or the Site or any part thereof Provided that if no managing agents are so employed then the Council may add a reasonable sum for the Council's costs of management of the Building or the Site or any part thereof
  - 7.8 Any other costs and expenses reasonably incurred by the Council in respect of the Building or the Site or any part thereof including the costs and expenses of any improvements to the Building and/or the Site whether incurred in consequence of complying with the provisions of the Act or any other legislation or otherwise howsoever incurred
8. The summary of costs and expenses referred to in paragraph 4 of this Schedule shall contain an explanation of the manner in which the proportion of those costs and expenses apportioned to the Flat under paragraph 6 of this Schedule has been calculated
  9. Moneys paid under paragraph 2.2 of this Schedule shall become part of the funds of the Council and shall not be impressed with any trust requiring them to be set aside as a separate fund for any particular purpose

#### **FOURTH SCHEDULE**

##### **PART I**

**(NAME AND ADDRESS OF PURCHASER)**

##### **PART II**

**(DESCRIPTION OF THE BUILDING) ALL**

**THAT** block of flats known as

**PART III**

**(PRICE)**

£ ( Pounds)

**PART IV**

**(DESCRIPTION OF THE FLAT)**

**ALL THAT** flat known as flat number on the [ ] floor of that part of the Building shown edged red on the Plan No 2 annexed hereto (hereinafter called "Plan No 2") Together with [the ground floor entrance and staircase leading thereto and] the store room (if any) shown edged red on Plan No 2 and including the ceilings and floors of the Flat the internal plaster and faces of the exterior walls of the Flat the internal walls of the Flat (but internal walls bounding the Flat shall be party walls severed medially) but excluding exterior walls roof foundations and other main structural parts of the Building

**PART V**

**(DISCOUNT)**

£ ( Pounds)

**EXECUTED BY THE COUNCIL AS A DEED (BUT NOT DELIVERED UNTIL THE DATE HEREOF)**

**THE COMMON SEAL** of **LEEDS CITY COUNCIL** was hereunto affixed in the presence of:-

Assistant Chief Executive (Corporate Governance)

**SIGNED AND DELIVERED AS A DEED** by the

Tenant in the presence of:-

Name of Witness

Occupation

Name of Witness

Address







## APPENDIX 6

### Section 125 Notices

#### Part 1 - Form of Section 125 Notice

#### HOUSING ACT 1985

#### SECTION 125

#### NOTICE OF PURCHASE PRICE

TO:- the person (hereinafter called "the Tenant") whose name and address are specified in the Schedule at the end of this Notice ("the Schedule").

**WHEREAS** the Tenant's right to buy the flat described in the Schedule (hereinafter called "the Property") has been established.

**LEEDS CITY COUNCIL** (hereinafter called "the Council") of Civic Hall, Leeds LS1 1UR the landlord of the Property **HEREBY GIVE NOTICE** to the Tenant as follows:-

- 1      1.1      **THE PRICE** specified in the Schedule is the price at which in the opinion of the Council the Tenant is entitled to have a long lease granted to him and
- 1.2      The provisions contained in the form of **LEASE** enclosed with this Notice are the provisions which in the opinion of the Council should be contained in the Lease.

These provisions enable the Council to recover from the Tenant **SERVICE CHARGES**. The Service Charge estimate ("the Estimate") attached to this Notice contains items of estimated non-repairing Service Charges during the reference period and itemised and non-itemised works of repair in respect of which the Council considers that costs may be incurred in the reference period (including works for the making good of structural defects)

1.2.1 non-repairing items

The Estimate contains the Council's estimate of the average annual amount (at current prices) which will be payable in respect of each head of charge in the reference period and the aggregate of those estimated amounts is also included

1.2.2 itemised and non-itemised repairs (including works for the making good of structural defects)

The Estimate contains the Council's estimate of the amount (at current prices) for works itemised of the likely cost of and of the Tenant's likely contributions in respect of each item and the aggregate amounts of those estimated costs and contributions and for works not so itemised an estimate of the average annual amount (at current prices) which the Council considers is likely to be payable by the Tenant

1.3 reference period for the purposes of the above estimates  
The reference period for the purposes of the above estimates is the period beginning on the date six months after the date this Notice is given and ending at the end of the fifth annual period used for the purposes of calculating Service Charges (as specified in the Third Schedule of the Lease).

1.4 statement of the effect of paragraph 16B of Schedule Six of the Housing Act 1985

The Tenant's liability in respect of costs incurred in the initial period of the Lease is restricted in respect of itemised and non-itemised repairs (including works for the making good of structural defects) as follows:-

1.4.1 the Tenant is not required to pay in respect of works itemised any more than the amount shown as the Tenant's estimated contribution in respect of that item, together with an inflation allowance

1.4.2 the Tenant is not required to pay in respect of non-itemised works at a rate exceeding:-

1.4.2.1 as regards parts of the initial period falling within the reference period for the purposes of the Estimate, the estimated annual average amount shown in the Estimate

1.4.2.2 as regards parts of the initial period not falling within the reference period the average rate produced by averaging over the reference period all works contained in the Estimate together with an inflation allowance

1.5 the initial period of the Lease

The initial period of the Lease begins with the grant of the Lease and continues until the end of the fifth annual period used for the purposes of calculating Service Charges (as specified in the Third Schedule of the Lease)

1.6 statement of effect of S450A of the Housing Act 1985 and Regulations made under that Section

The Secretary of State may by regulations provide that where

1.6.1 a lease of a flat has been granted in pursuance of Part V (the right to buy), and

1.6.2 the landlord is the housing authority who granted the lease or another housing authority

the Tenant has in such circumstances as may be prescribed a right to a loan in respect of service charges in respect of repairs (including works for making good a structural defect) (whether to the flat the building in which it is situated or any other building or land) which are payable in the period beginning with the grant of the Lease and ending with the tenth anniversary of the grant or where the Lease provides for Service Charges to be payable by reference to

a specified annual period with the end of the tenth such period beginning after the grant of the Lease

The regulations may provide that the right

1.6.2.1 arises only in respect of so much of a Service Charge as exceeds a minimum qualifying amount and does not exceed a maximum qualifying amount and

1.6.2.2 does not arise unless the amount thus qualifying for a loan itself exceeds a minimum amount

the amounts being either prescribed or ascertained in a prescribed manner

The regulations shall provide that the right is a right to leave the whole or part of the Service Charge outstanding

The regulations may as regards the procedure for exercising the right provide

1.6.3.1 that a demand for Service Charge in respect of repairs shall inform the Tenant whether in the landlord's opinion he is entitled to a loan and if he is what he must do to claim it

1.6.3.2 that the right must be claimed within a prescribed period of the demand and

1.6.3.3 that on the right being claimed the lender shall inform the Tenant of the terms of the loan and of the prescribed period within which the Tenant may accept the offer

The Housing (Service Charge Loans) Regulations 1992 provide that the Tenant has the right to a loan in respect of certain Service Charges in respect of which a demand was made on or after 17 August 1992. The right only applies

1.6.4.1 to Service Charges in respect of repairs to the Property the building in which it is situated or any other building or land which are payable in the period from the grant of the Lease up to the end of the tenth annual period for payment of service charges

1.6.4.2 to so much of such Service Charge as exceeds £1500 (less the amount of any Service Charge already demanded under the Lease in respect of the same accounting period as the charge) and does not exceed £20,000 (less the amount of any outstanding loans or Service Charges) and

1.6.4.3 the right does not apply unless the amount qualifying for a loan exceeds £500

The above figures will be adjusted in each year by reference to the percentage increase in the retail prices index.

Demands for Service Charges in respect of repairs must inform the Tenant whether in the Council's opinion the Tenant is entitled to a loan and if he is what he must do to claim it. Any claim by the Tenant to the right to a loan must be made by notifying the Council in writing to that effect within the period of 6 weeks beginning on the date of demand for Service Charges in respect of repairs to which the claim relates was given. If the Tenant claims the right to a loan the Council must then inform the Tenant of the terms of the loan and the period within which the Tenant may accept the offer. The Tenant may accept the offer by notifying the Council in writing to that effect within the period of 4 weeks beginning on the date when the Council informs the Tenant of the terms of the loan. The right to a loan is a right to leave the whole or part of the Service Charges outstanding. A loan must be secured by a mortgage of the Property and repayment of the amount secured must be made in equal instalments of principal and interest combined. There are specified periods for repayment in the Regulations and the rate of interest payable on the loan must be determined in accordance with Schedule 16 to the Housing Act 1985. The Council can charge administrative expenses up to £100 to the Tenant and the Tenant may add these expenses to the amount of the loan.

1.7 improvement contributions

The Estimate specifies estimates for works (if any) in respect of which the Council consider that costs may be incurred in the reference period. The reference period for these purposes is as specified in 1.3 above. The works to which the estimates relate are itemised and show

1.7.1 the amount (at current prices) of the likely cost of and of the Tenant's likely contribution in respect of each item and

1.7.1 the aggregate amounts of those estimated costs and contributions

1.8 statement of the effect of paragraph 16C of Schedule 6 of the Housing Act 1985

The Tenant's liability in respect of costs incurred in the initial period of the Lease is restricted in respect of improvement contributions as follows

1.8.1 the Tenant is not required to make any payment in respect of works for which no estimate was given in the Estimate

1.8.2 the Tenant is not required to pay in respect of works for which an estimate was given in the Estimate any more than the amount shown as his estimated contribution in respect of that item together with an inflation allowance

The initial period of the Lease for these purposes is as specified in 1.5 above

- 2 2.1 **THE VALUE** specified in the Schedule was the value of the Property at the date of the service of the Tenant's notice claiming the right to buy
- 2.2 The discount specified in the Schedule is the discount to which the Tenant is entitled. The period specified in the Schedule was the period taken into account for the purposes of calculating the discount. The discount cannot reduce the price below the amount mentioned in Section 131(1) of the Housing Act 1985 as amended which amount (if applicable) is specified in the Schedule. This Section states that the discount shall not reduce the price below the amount which in accordance with any determination made by the Secretary of State for the Environment is to be taken as representing so much of the costs incurred in respect of the Property as in accordance with the determination is to be treated as incurred after the beginning of that period of account of the Council in which falls the date which is ten years or such other period of time as may be specified in an Order made by the Secretary of State earlier than the relevant time and if the price before discount is below that amount there shall be no discount. The discount cannot exceed £24,000 being the amount prescribed by the Secretary of State for the Environment under the power conferred on him by Section 131(2) of the Housing Act 1985.
- 2.3 The Council has notified the Tenant by letter of a description of any **STRUCTURAL DEFECT** known to the Council affecting the Property or the building in which it is situated or any other building over which the Tenant will have rights under the Lease and any such letter shall be treated and accepted by the Tenant as incorporated herein in discharge of the Council's obligations under Section 125 4A of the Housing Act 1985 as amended. Neither this Notice nor any such letter should be treated or construed by the Tenant as a representation or warranty as to the state or condition of the Property or any such building nor as a collateral contract. **ANY VALUATION OR SURVEY CARRIED OUT BY THE COUNCIL AND ANY SUCH LETTER ARE ONLY FOR THE DISCHARGE OF THE COUNCIL'S OBLIGATIONS UNDER SECTION 127 AND SECTION 125 4A OF THE HOUSING ACT 1985 AS AMENDED. ANY ENQUIRY WHICH THE TENANT WISHES TO MAKE INTO THE NATURE OR SERIOUSNESS OF ANY DEFECTS THEIR CAUSES OR ANY NECESSARY REMEDIAL WORKS SHOULD BE DEALT WITH BY AN INDEPENDENT PROFESSIONAL SURVEY ARRANGED BY THE TENANT AT THE TENANT'S EXPENSE.**
- 2.4 **THE IMPROVEMENTS** listed in the Tenant's Notice claiming the right to buy were disregarded in valuing the Property
- 3 3.1 The Tenant has the right to have the value of the Property determined or redetermined by **THE DISTRICT VALUER** by a notice in writing served on the Council not later than 3 months after the service on the Tenant of this Notice except that
- 3.1.1 if proceedings are then pending between the Council and the Tenant for the determination of any other question arising under Part V of the Housing Act 1985 the notice may be served at any time within three months of the final determination of the proceedings, and

3.1.2 if such proceedings are begun after a previous determination by the District Valuer the Notice may be served within four weeks of the final determination of the proceedings.

3.2 Within the period of 12 weeks beginning with the later of:

3.2.1 the date of service of this Notice; and

3.2.2 (where the Tenant exercises his right to have the value of the Property determined or redetermined by the District Valuer), the date of service of the Council's Notice stating the effect of the determination or redetermination,

the Tenant must serve a written notice ("Tenant's Notice of Intention") on the Council stating that he intends to pursue his claim to exercise the right to buy, or that he withdraws that claim.

#### **A TENANT'S NOTICE OF INTENTION IS ENCLOSED**

#### **PLEASE COMPLETE THIS AND POST IF BACK TO THE COUNCIL**

3.3 If the Tenant fails to serve the Tenant's Notice of Intention within the period specified above, the Council may at any time after the end of that period, serve on the Tenant a written notice requiring him to serve that notice within 28 days, and informing him that if he does not comply with that notice, the Tenant's notice claiming to exercise the right to buy shall to be deemed to be withdrawn at the end of that period (or, as the case may require, that period as extended).

3.4 If there is a **CHANGE OF TENANT** after the Tenant's notice claiming to exercise the right to buy, then whether or not the former Tenant has served the Tenant's Notice of Intention, the new Tenant must serve a Tenant's Notice of Intention within the period of 12 weeks beginning with the later of

3.4.1 his becoming the secure Tenant; and

3.4.2 (where the right to have the value of the Property determined or redetermined by the District Valuer is, or has been, exercised by him or the former Tenant) the date of service of the Council's notice stating the effect of the determination or redetermination.

4 Section 140 and 141 of the Housing Act 1985 contain provisions dealing with **NOTICES TO COMPLETE**. The first step is for the Council to serve the Tenant with a "first Notice to Complete" requiring the Tenant to complete or give written notice to the Council of any terms of the transaction which are outstanding. The first Notice to Complete cannot be served earlier than three months after the service of this Notice

Even if that date has been reached a first Notice to Complete cannot be served where: -

4.1 a requirement for the determination or redetermination of the value of the Property by the District Valuer has not been complied with;

- 4.2 proceedings for the determination of any question as to the terms of the transaction have not been disposed of; or
- 4.3 any relevant matter stated to be outstanding in a written notice served on the Council by the Tenant has not been agreed in writing or determined.

The first Notice to Complete must allow the Tenant a reasonable time (not less than 56 days) to comply with it. If the Tenant does not comply the Council may then serve on the Tenant a second Notice to Complete requiring him to complete the transaction within a reasonable time (not less than 56 days). If the Tenant does not comply with the second Notice to Complete the Tenant's notice claiming to exercise the right to buy shall be deemed to be withdrawn at the end of the period stated in the second Notice to Complete, or as the case may require, that period as extended.

- 5
  - 5.1 If **THE COUNCIL'S TITLE TO THE PROPERTY** is unregistered the Council will provide the Tenant on completion with a Certificate stating its entitlement to grant a long Lease subject to the incumbrances rights and interests (if any) stated in the form of Lease. This Certificate will be accepted by the Chief Land Registrar for the purpose of the registration of title as sufficient evidence of the facts stated in it. Consequently it will be unnecessary to make a search against the Council in H M Land Charges Register for the purpose of the registration of title.
  - 5.2 If the title of the Council is registered a copy of the Land Certificate/Office Copy Entries will be provided on completion.
- 6 In this Notice the singular shall include the plural and the masculine shall include the feminine except where the context does not so permit.

DATED

SIGNED

**THE SCHEDULE  
hereinbefore referred to**

**PART 1**

NAME AND ADDRESS OF THE TENANT

DESCRIPTION OF THE PROPERTY (more particularly described in the Lease)

THE VALUE OF THE PROPERTY

THE DISCOUNT TO WHICH THE TENANT IS ENTITLED

THE PRICE AT WHICH IN THE OPINION OF THE COUNCIL THE TENANT IS ENTITLED  
TO HAVE A LONG LEASE GRANTED TO HER

THE PERIOD TAKEN INTO ACCOUNT FOR THE PURPOSES OF THE DISCOUNT

years

THE AMOUNT MENTIONED IN SECTION 131(2) OF THE HOUSING ACT 1985 (IF  
APPLICABLE

QP16(PFT)/205



## HOUSING ACT 1985

### SECTION 125

#### NOTICE OF PURCHASE PRICE

**TO:** the person (hereinafter called “the Tenant”) whose name and address are specified in Parts 1 and 2 of the Fifth Schedule to the Transfer accompanying this Notice (hereinafter called “the Transfer”).

**WHEREAS** the Tenant’s right to buy the premises described in Part 2 of the Fifth Schedule to the Transfer (hereinafter called “the Property”) has been established.

**LEEDS CITY COUNCIL** (hereinafter called “the Council”) of Civic Hall, Leeds LS1 1UR the landlord of the Property **HEREBY GIVE NOTICE** to the Tenant as follows:

- 1.1 **THE PRICE** specified in Part 8 of the Fifth Schedule to the Transfer is the price at which in the opinion of the Council the Tenant is entitled to have the freehold conveyed to him and
- 1.2 **THE** provisions contained in **THE TRANSFER** are the provisions which in the opinion of the Council should be contained in the Transfer.
- 2.1 **THE VALUE** specified in Part 6 of the Fifth Schedule to the Transfer was the value of the Property at the date of the service of the Tenant’s notice claiming the right to buy.
- 2.2 **THE DISCOUNT** specified in Part 7 of the Fifth Schedule to the Transfer is the discount to which the Tenant is entitled. The period specified in Part 4 of the Fifth Schedule to the Transfer was the period taken into account for the purposes of calculating the discount **PROVIDED THAT** the discount shall not reduce the price below the amount (if applicable) specified in Part 3 of the Fifth Schedule to the Transfer. Section 131 of the Housing Act 1985 as amended provides that the discount shall not reduce the price below the amount which in accordance with any determination made by the Secretary of State for the Environment is to be taken as representing so much of the costs incurred in respect of the Property as, in accordance with the determination, is to be treated as incurred after the beginning of that period of account of the Council in which falls the date which is ten years or such other period of time as may be specified in an order made by the Secretary of State earlier than the relevant time and if the price before discount is below that amount there shall be no discount. The discount cannot exceed £24,000 being the amount prescribed by the Secretary of State for the Environment under the power conferred on him by section 131(2) of the Housing Act 1985.
- 2.3 **THE IMPROVEMENTS** listed in the Tenant’s notice claiming the right to buy were disregarded in valuing the Property.
- 2.4 The Council has notified the Tenant by letter of a description of any **STRUCTURAL DEFECT** known to the Council affecting the Property or any other building over which the Tenant will have rights under the Transfer and any such letter shall be treated and accepted by the Tenant as incorporated

herein in discharge of the Council's obligations under Section 125 4A of the Housing Act 1985 as amended. Neither this Notice nor any such letter should be treated or construed by the Tenant as a representation or warranty as to the state or condition of the Property or any such building nor as a collateral contract. **Any valuation or survey carried out by the Council and any such letter are only for the discharge of the Council's obligations under Section 127 and Section 125 4A of the Housing Act 1985 as amended. Any inquiry which the Tenant wishes to make into the nature or seriousness of any defects, their causes, or any necessary remedial works should be dealt with by an independent professional survey arranged by the Tenant at the Tenant's expense.**

3 3.1 The Tenant has the right to have the value of the Property determined or redetermined by **THE DISTRICT VALUER** by a notice in writing served on the Council not later than 3 months after the service on the Tenant of this Notice except that:

3.1.1 if proceedings are then pending between the Council and the Tenant for the determination of any other question arising under Part V of the Housing Act 1985, the notice may be served at any time within three months of the final determination of the proceedings, and

3.1.2 if such proceedings are begun after a previous determination by the District Valuer the notice may be served within four weeks of the final determination of the proceedings.

3.2 Within the period of 12 weeks beginning with the later of:

3.2.1 the date of service of this Notice; and

3.2.2 (where the Tenant exercises his right to have the value of the Property determined or redetermined by the District Valuer), the date of service of the Council's Notice stating the effect of the determination or redetermination

the tenant must serve a written notice ("Tenant's Notice of Intention") on the Council stating that he intends to pursue his claim to exercise the right to buy, or that he withdraws that claim.

#### **A TENANT'S NOTICE OF INTENTION IS ENCLOSED**

#### **PLEASE COMPLETE THIS AND POST IT BACK TO THE COUNCIL**

3.3 If the Tenant fails to serve the Tenant's Notice of Intention within the period specified above, the Council may at any time after the end of that period, serve on the Tenant a written notice requiring him to serve that notice within 28 days, and informing him that if he does not comply with that notice, the Tenant's notice claiming to exercise the right to buy shall to be deemed to be withdrawn at the end of that period (or, as the case may require, that period as extended).

- 3.4 If there is a **CHANGE OF TENANT** after the Tenant's notice claiming to exercise the right to buy, then whether or not the former tenant has served the Tenant's Notice of Intention, the new Tenant must serve a Tenant's Notice of Intention within the period of 12 weeks beginning with the later of
- 3.4.1 his becoming the secure Tenant; and
  - 3.4.2 (where the right to have the value of the Property determined or redetermined by the District Valuer is, or has been, exercised by him or the former Tenant) the date of service of the Council's notice stating the effect of the determination or redetermination.
- 4 Section 140 and 141 of the Housing Act 1985 contain provisions dealing with **NOTICES TO COMPLETE**. The first step is for the Council to serve the Tenant with a "first Notice to Complete" requiring the Tenant to complete or give written notice to the Council of any terms of the transaction which are outstanding. The first Notice to Complete cannot be served earlier than three months after the service of this Notice

Even if that date has been reached a first Notice to Complete cannot be served where:

- 4.1 a requirement for the determination or redetermination of the value of the Property by the District Valuer has not been complied with;
- 4.2 proceedings for the determination of any questions as to the terms of the transaction have not been disposed of; or
- 4.3 any relevant matter stated to be outstanding in a written notice served on the Council by the Tenant has not been agreed in writing or determined.

The first Notice to Complete must allow the Tenant a reasonable time (not less than 56 days) to comply with it. If the Tenant does not comply the Council may then serve on the Tenant a second Notice to Complete requiring him to complete the transaction within a reasonable time (not less than 56 days). If the Tenant does not comply with the second Notice to Complete the Tenant's notice claiming to exercise the right to buy shall be deemed to be withdrawn at the end of the period stated in the second Notice to Complete, or as the case may require, the period as extended.

- 5
- 5.1 If **THE COUNCIL'S TITLE TO THE PROPERTY** is unregistered the Council will provide the Tenant on completion with a Certificate stating its entitlement to convey the freehold subject to the incumbrances rights and interests (if any) stated in the Transfer. This Certificate will be accepted by the Chief Land Registrar for the purpose of the registration of title as sufficient evidence of the facts stated in it. Consequently it will be unnecessary to make a search against the Council in H M Land Charges Register for the purpose of the registration of title.
  - 5.2 If the title of the Council is registered a copy of the Land Certificate/Office Copy Entries will be provided on completion.
- 6 In this Notice the singular shall include the plural and the masculine shall include the feminine except where the context does not so permit.

DATED

SIGNED



## **APPENDIX 7**

**Not used**

## APPENDIX 8

### Dwellings With Valid CP12 Certificates























































































































































## **APPENDIX 10**

### **Project Sites**