

Dated

2014

**KINGSTON-UPON-HULL CITY COUNCIL
RIVERSIDE CARE AND SUPPORT LIMITED**

PROJECT AGREEMENT
Private Finance Initiative relating to
the provision of extra care housing
in the City of Hull

ADDLESHAW GODDARD

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Between

- (1) **Kingston-Upon-Hull City Council** of the Guildhall, Alfred Gelder Street, Hull, HU1 2AA (**Authority**); and
- (2) **Riverside Care and Support Limited** (Company No. 4025897 and Charity Number 1152095) whose registered office is at 2 Estuary Boulevard, Estuary Commerce Park, Liverpool L24 8RF (**Contractor**).

Whereas

- A The Authority is empowered to procure the construction of the Apartment Areas (as defined in this Agreement) and the provision of associated services pursuant to Section 1 of the Local Government (Contracts) Act 1997 and Section 2 of the Local Government Act 2000.
- B In accordance with the United Kingdom Government's Private Finance Initiative by an advertisement dated 9 January 2012 and referenced 2012/578-003151 in the Official Journal of the European Union the Authority sought bids from appropriately qualified contractors for the provision, management and maintenance of the Apartment Areas and the provision of housing and facilities management services.
- C Through a competitive tender process the Contractor has indicated its willingness, and has been selected by the Authority, to provide the Apartment Areas and to manage and maintain the Apartment Areas and provide housing and facilities management services in accordance with the terms and conditions of this Agreement.
- D The parties intend that this Agreement be a certified agreement for the purposes of the Local Government (Contracts) Act 1997 and the relevant discharge terms are set out in Schedule 10 (Relevant Discharge Terms).
- E The Contractor consents to the issue of a certificate under Section 3 of the Local Government (Contracts) Act 1997.
- F The Authority is a Best Value authority under the Local Government Act 1999 and the functions in respect of which the Authority wishes to procure the management and maintenance of the Apartment Areas are Best Value functions.

It is agreed

PART 1 - PRELIMINARY

1 Definitions and Interpretation

1.1 Definitions

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

1985 Act means the Housing Act 1985

1999 Act means the Local Government Act 1999

Abandon means the Contractor wholly or substantially wilfully ceases to carry out the Works contemplated by the Construction Programme for twenty (20) consecutive Business Days or during sixty (60) Business Days (whether consecutive or not) in any Contract Year and/or wilfully ceases to provide substantially all the Services for fifteen (15) consecutive Business Days or during thirty (30) Business Days (whether consecutive or not) in any Contract Year, except when relieved of the obligation to do so by the express provisions of this Agreement

Access Protocol means the access protocol set out in Appendix 2

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

Access Refusal Waiting List means the waiting list to be maintained by the Contractor of the Apartments subject to an Access Refusal Event, in accordance with the Access Protocol

Adaptations means any special adaptations to be added to or removed from the Site to accommodate any special health or disability requirements of a Tenant or Tenants

Adaptations Works has the meaning given to it in Clause 32.1 (Adaptations)

Adaptations Works Schedule of Rates means the schedule of rates in respect of Adaptation Works contained in Appendix 5 of Schedule 25 (Change Protocol)

Additional Charge has the meaning given to it in Schedule 4 (Payment Mechanism)

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 Authority) in excess of the amount of principal scheduled under the Senior Financing Agreements at Financial Close to be outstanding at that date, but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit and
- (b) in respect of any Additional Permitted Borrowing the Senior Lender 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 Authority 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 Sites 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 60.3 (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 Amounts paid to the Contractor (if a positive number)
- (b) the Tender Costs and
- (c) amounts that the Authority is entitled to set off or deduct under clause 33.9 (Rights of Set Off)

plus an amount equal to the aggregate of:

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

to the extent that:

- (A) (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and
- (B) the Authority has received such amounts in accordance with this Agreement or such amounts are standing to the credit of the Joint Insurance Account

Adjusted 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 Authority is entitled to set off or deduct under clause 33.9 (Rights of Set Off)

plus an amount equal to the aggregate of:

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

to the extent that

- (A) (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender and
- (B) the Authority has received such amounts in accordance with this Agreement

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

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

Affordable Rent Model means the 2011-2015 Affordable Homes Programme – Framework published by the Department for Communities and Local Government and the Homes and Communities Agency in February 2011 or any other guidance or legislation in place from time to time relating to the setting and charging of affordable (as opposed to social) rents

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

Agreed Rent means the Rent as set out in the Base Case at the Commencement Date as adjusted from time to time provided (and irrespective of whether or not the Landlord is a Registered Provider) that such Rent is set in accordance with and does not contravene the Rent Influencing Regime or (as relevant) clause 33A.5

Agreed Service Charge means the Service Charge as set out in the Base Case at the Commencement Date as adjusted from time to time provided (and irrespective of whether or not the Landlord is a Registered Provider) that such Service Charge is set in accordance with and does not contravene any relevant guidance or Legislation that is applicable to a Registered Provider and which relates to the setting, calculating and charging of service charges or (as relevant) clause 33A.5

Agreement means this agreement (including its Schedules and Appendices)

Allocation Protocol means the allocation protocol set out in Appendix 1 as updated by agreement between the Parties from time to time

Ancillary Intellectual Property Rights any and all Intellectual Property Rights which are not Generated Intellectual Property Rights including without limitation any Intellectual Property Rights created prior to the date of this Agreement by the Contractor

Ancillary Rights means:

- (a) a non-exclusive licence to enter and remain upon those parts of the Sites that the Contractor and/or any Contractor Related Party requires access to in order to carry out the Works
- (b) such rights of access to and egress from the Sites as are necessary for the Contractor and any Contractor Related Party to perform their obligations and exercise their rights under this Agreement and in particular for the purposes of implementing the Works, provided that such rights may be varied by the Authority and such variation will be deemed to be a Medium Value Change
- (c) rights of free and uninterrupted passage and running of water soil gas electricity telephone and other services provided that such rights of passage may be varied by the Authority to such alternative routes as the Authority may reasonably specify from time to time and
- (d) the right where necessary to inspect repair maintain or renew the Services Media and the right (at the cost of the Contractor) to connect into the Services Media and to construct such new Services Media as may from time to time be necessary to serve the Sites provided that the prior written consent of the Authority is obtained (such consent not to be unreasonably withheld or delayed)

provided that:

- (e) such rights are subject to the Disclosed Title Matters and
- (f) the rights shall not in any circumstances entitle the Contractor or any Contractor Related Party to exclusive occupancy or exclusive possession of any part of the Sites (save as may be required by the Contractor and approved by the Authority (such approval not to be unreasonably withheld or delayed) in order to comply with relevant health and safety legislation) on a temporary basis

Annual Service Report has the meaning given to it in clause 35.3 (Annual Service Report)

Annual Service Report Date means 1 May in each Contract Year

Apartment means any one of the ECH Apartments or the Short Stay Apartments as the case may be

Apartments means together the ECH Apartments and the Short Stay Apartments

Apartment Area means any one of the ECH Apartment Areas or the Short Stay Apartment Area as the case may be

Apartment Areas means together the ECH Apartment Areas and the Short Stay Apartment Area

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 numbered 1 to 3 to this Agreement

Appropriate Limit has the meaning given to it in Clause 55.10.7 (Freedom of Information)

Approved Purposes has the meaning given to it in clause 62.1 (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

ASBO means an anti-social behaviour order as defined in the Crime and Disorder Act 1998

As-Built Drawings means drawings, technical information, models, operation and maintenance manuals, ICT network diagrams and technical information of a like nature to encompass the method of construction, manufacture, operation and maintenance of each element of the Works in sufficient detail to allow a competent person to understand all material elements of the Works and to maintain, dismantle, reassemble, adjust and operate all plant, equipment, ICT infrastructure, fixtures, structures and construction elements thereof

Assets means all assets and rights to enable the Authority or a successor contractor to own, operate and maintain the Project in accordance with this Agreement including:

- (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
- (f) any Intellectual Property Rights subject to and in accordance with clause 62 (Intellectual Property) and
- (g) the Leases

but excluding any assets and rights in respect of which the Authority is full legal and beneficial owner

Assigned Employees means any person engaged or employed by the Contractor or any sub-contractor in the provision of the Services

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 shall include each of the Shareholders, save that for the purposes of determining whether one entity is an Associated Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded

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

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

Authority Damage has the meaning given to it in clause 56A (Damage to the Apartment Areas)

Authority 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 Authority or other Relevant Authority
- (b) a failure by the Authority to make payment of any amount of money equivalent to the Gross Monthly Charge that is due and payable by the Authority under this Agreement within twenty (20) Business Days of service of a formal written demand by the Contractor, where the amount fell due and payable two (2) (or more) months prior to the date of service of the written demand
- (c) a breach by the Authority of its obligations under this Agreement which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Agreement for a continuous period of two (2) months or
- (d) a breach by the Authority of clause 63.1 (Restrictions on Transfer of the Agreement by the Authority)

Authority Default Termination Sum means the amount payable in accordance with clause 44.1 (Authority Default Termination Sum)

Authority Direction means, in the event that there are any Transferring Employees and/or any Retained Transferring Employees, any direction given by the Authority to the Contractor (such direction to be confirmed in writing) in relation to or in connection with any persons employed or engaged in respect of any of the Services

Authority Employees means all those persons employed by the Authority under a contract of employment (but excluding any person engaged by the Authority as an independent contractor or persons employed by any sub-contractor engaged by the Authority)

Authority Ground Investigation means the ground investigation report in respect of the Hall Road Site undertaken by Sub Surface North West Limited dated March 2010 with report number NEZ 973A

Authority Policies means the policies of the Authority referred to in Schedule 12 (Authority Policies) as any such policies may be amended in line with clause 53 (Authority and Contractor Changes)

Authority Related Party means:

- (a) any officer, agent or employee of the Authority acting in the course of his office or employment including any sub-contractors of any tier of the Authority engaged in relation to the Services
- (b) any person on or at an Apartment Area at the express or implied invitation of the Authority (provided that the general public shall not, for the purposes of this definition, be deemed to be impliedly invited by the Authority)

- (c) the Care Provider and
- (d) the Catering Provider

but excluding in each case the Contractor and any Contractor Related Parties

Authority's Representative means the representative appointed by the Authority pursuant to clause 12.4 (Authority's Representative)

Authority's Residual Value Overage Share [REDACTED]

Available has the meaning given to it in Schedule 4 (Payment Mechanism)

Availability Certification Requirements means the requirements as set out in Annex I of the Output Specification

Availability Standards means the standards against which Availability will be measured as set out in Annex II of the Output Specification

Aviva ERF means:

- (a) in relation to a termination of this Agreement under Clause 37.3 (Termination on Authority Default) the Early Repayment Fee to be made pursuant to and in accordance with the terms of Clause 7.6 and Schedule 3 of the Senior Credit agreement and termed "**ERF1**"
- (b) in relation to termination of this Agreement under Clause 37.1 (Voluntary Termination by the Authority) the Early Repayment Fee to be made pursuant to and in accordance with clause 7.6 and Schedule 3 of the Senior Credit Agreement and termed "**ERF2**" and
- (c) in relation to the termination of this Agreement under clause 37.6 (Termination by the Authority for Breach of Refinancing Provisions), clause 37.7 (Termination on Corrupt Gifts and Fraud) or clause 39 Termination on Force Majeure), where any Early Repayment Fee is payable by the Contractor pursuant to and in accordance with the terms of the Senior Credit Agreement then the amount of any such Early Repayment Fee payable by the Authority pursuant to this Agreement shall be zero

Barred List means the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012

Base Case means [REDACTED]
[REDACTED]
[REDACTED]

Base Case Equity IRR means [REDACTED] per cent

Base Senior Debt Termination Amount means subject to clause 47.3 (Changes to Financing Agreements):

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing) and

- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs (including, but without double counting, Aviva ERF), payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement, subject to the Contractor and the Senior Lenders 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 Joint Insurance Account and the Distribution Account) held by or on behalf of the Contractor on the Termination Date
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have and
- (v) the Lender RV Element,

and if the resultant calculation is a negative figure the amount shall be treated as nil

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

Best Value Inspector means an officer, agent or employee of the Audit Commission or other Relevant Authority empowered to inspect the Authority's compliance with the Best Value Duty in accordance with Sections 10 and 11 of the 1999 Act and Part 8 of the Local Government and Public Involvement in Health Act 2007 (Local Services: Inspection and Audit) and Best Value Inspection shall be interpreted accordingly

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 60.17 (Similar Disputes)

Building Contractor means Wates Construction Limited (company number 01977948), 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 Manual means the manual for the Works containing:

Part 1

a copy of the health and safety file pursuant to the CDM Regulations (excluding those aspects of the same as fall within Part 2); and

Part 2

- (a) an introduction (outlining the structure and content of the Building Manual; how to use the Building Manual and a brief summary of the various systems covered by the Building Manual and emergency contacts);
- (b) all As-Built Drawings, details of construction and specifications;
- (c) design principles including Stirling University, BREAAAM, Secured by Design etc;
- (d) guarantees, warranties and certificates;
- (e) maintenance agreements relating to the Works;
- (f) commissioning and testing results;
- (g) manufacturers' technical literature;
- (h) instructions for operation and maintenance of the Facilities (including maintenance charts, all appropriate manuals and manufacturers' literature);
- (i) building log books;
- (j) building user guides, including a non-technical version for staff and residents; and
- (k) an asset register of plant and equipment; and
- (l) the particular requirements for the demolition, decommissioning and disposal

Business Days means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London

Capital Expenditure any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time, International Financial Reporting Standards from time to time, or proper accounting practices for local authorities as defined by Section 21(2) of the Local Government Act 2003 and Regulation 31 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003

Care Provider means any person commissioned by the Authority to provide the Care Services (including, if relevant, the Authority itself or any successor body responsible for the commissioning of care) to any Tenants of an ECH Apartment

Care Services means the personal care services to be provided by the Care Provider on a twenty four (24) hour basis to any Tenants of an ECH Apartment

Catering Provider means any person commissioned by the Authority from time to time to provide the Catering Service

Catering Service means the catering service to be provided by the Authority or by its employees, staff, agent, contractor or subcontractor of any tier from time to time at the Apartment Areas

CDM Regulations means the Construction (Design and Management) Regulations 2007

Certificate of Availability 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 Phase referred to in the certificate, of the Availability Certification Requirements

Certificate of Substantial Completion means a certificate issued by the Independent Certifier confirming that Substantial Completion has been achieved in relation to any Phase referred to in the Certificate

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

Challenge has the meaning given to it in Clause 32A.2 (Utilities)

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 and/or the Landlord (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 (Authority Step-In), 65 (Financial Adjustments), and/or the Change Protocol, including the reasonable costs of preparation of design and estimates
- (b) the costs of continued employment of, or making redundant, staff who are no longer required
- (c) the costs of employing additional staff
- (d) reasonable professional fees
- (e) the costs to the Contractor of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Unitary Charge
- (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement
- (g) operating costs, or life cycle, maintenance or replacement costs
- (h) Capital Expenditure (or, in the case of a Relevant Event which is a Qualifying Change in Law, Capital Expenditure for which the Authority is responsible)
- (i) the costs required to ensure continued compliance with the Financing Agreements

- (j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy and
- (k) Direct Losses 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 the Contractor (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends) 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 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-Contractors and/or the Landlord (without double counting)

Change Protocol means that procedure set out in Schedule 25 (Change Protocol)

Code of Practice has the meaning given to it in clause 55.10.8 (Freedom of Information)

Collateral Warranty means a collateral warranty executed as a deed between the Authority and (as the case may be), the Building Contractor, the Responsive Repairs and Cyclical Maintenance and Renewal Contractor, the Housing Management Contractor, a Principal Building Sub-Contractor, and a member of the Professional Team in the relevant form as set out in the relevant part of Schedule 5 (Collateral Warranties)

Commencement Date 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 22 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 22 (Commercially Sensitive Information)

Committed Stand-by Facility means a standby facility committed by the Senior Lenders at or at a date later than the date of this Agreement, or without prejudice to clause 47.3.2(a), as the same may be amended as allowed by clause 47.3.1 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
- (b) accesses, entrances, lifts, reception areas, passages, landings, staircases, gardens, refuse areas, forecourts, roadways, pathways, living areas, dining areas, activity areas, laundry areas, assisted bathing areas and areas for the charging of electric vehicles 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 Apartments at an Apartment Area

Compensation Date means either:

- (a) if clause 43.2 (Retendering Procedure) applies, the earlier of:
 - (i) the date that the New Agreement is entered into and
 - (ii) the date on which the Authority pays the Adjusted Highest Compliant Tender Price to the Contractor or
- (b) if clause 43.3 (No Retendering Procedure) applies, the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined

Compensation Event means:

- (a) a breach by the Authority of any of its obligations or of any warranty under this Agreement
- (b) any other matter or event expressly referred to as required to be treated as or deemed to be a Compensation Event within this Agreement;
- (c) all works required to be undertaken pursuant to the terms of the Demolition Contract have not been completed by [REDACTED]; and
- (d) the design, approval and carrying out of any Works to existing utilities, street lighting, highway signage, sewers and/or statutory services within and/or adjacent to the public highway in consequence of the works required to be undertaken pursuant to Hall Road Junction to the extent that the cost of the same exceeds [REDACTED]

Completion Costs means prior to the final Services Commencement Date and to the extent that the Contractor can demonstrate to the reasonable satisfaction of the Authority that it has not been or will not be compensated for the same under the relevant provisions of Part 7 (Compensation on Termination), the proper and reasonable costs of completing the Works at a Site in respect of which a Lease has been granted as soon as reasonably practicable, provided that such costs shall be the lower of:

- (a) the amounts that would have been paid to the Building Contractor under the Building Contract for such works on the assumption that the Building Contract is in its form at the date hereof (save as may have been amended by a Relevant Event) and on the assumption that the Building Contractor has properly performed its obligations under the Building Contract;
- (b) such costs as provided for in the Base Case (being the costs shown as being payable to the Building Contractor under the Building Contract for all of the Works in or to the relevant Site (save as may have been amended by a Relevant Event)) less all amounts paid by or due from the Contractor to the Building Contractor for the Works carried out within such relevant Site prior to or as at the Termination Date

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 1998 and
- (b) Commercially Sensitive Information

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 Panel has the meaning given to it in clause 60.4 (Identity of Adjudicator)

Construction Programme means the programme for the carrying out of the Works as contained in part 3 of Schedule 2 (Contractor's Proposals) as may be varied from time to time in accordance with the Review Procedure

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

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

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

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

Contract Month 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 Change has the meaning given in the Change Protocol

Contractor Change Notice has the meaning given in the Change Protocol

Contractor Default [REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
[REDACTED]
- (d) [REDACTED]
[REDACTED]
[REDACTED]
- (e) [REDACTED]
[REDACTED]
[REDACTED]
- (f) [REDACTED]
[REDACTED]
- (g) [REDACTED]
[REDACTED]
- (h) [REDACTED]
- (i) [REDACTED]
- (j) [REDACTED]
[REDACTED]
[REDACTED]

- (k) [REDACTED]
- (l) [REDACTED]
- (m) [REDACTED]
- (n) [REDACTED]
- (o) [REDACTED]
- (p) [REDACTED]
- (q) [REDACTED]

Contractor Default Residual Value Sum means the Residual Value Sum discounted back at the Termination Date Discount Rate from the date on which the Residual Value Sum is shown to be payable in the Base Case to the Termination Date

Contractor Footpath Suspension Notice means a notice served by the Contractor pursuant to clause 14B.2.3

Contractor Related Party means:

- (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 of any tier and any of their officers, servants or agents
- (c) any person on or at any Apartment Area at the express or implied invitation of the Contractor (other than an Authority Related Party),

but excluding in each case the Authority and an Authority Related Party

Contractor Suspension Notice has the meaning given to it in Clause 14A.2.2 (Judicial Proceedings)

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 2 (Contractor's Proposals), and/or any proposed variation to the Contractor's Proposals to which the Authority does not raise objections in accordance with the Review Procedure

Contractor's Proposals means the specific proposals for the provision of the Apartment Areas and provision of the Services to satisfy the Output Specification, as contained in Schedule 2 (Contractor's Proposals) as may be varied from time to time in accordance with the Review Procedure

Contractor's Representative means the person to be appointed by the Contractor pursuant to clause 12.1 (Contractor's Representative)

Contractor's Residual Value Overage Share means [REDACTED] of the Residual Value Overage (if any)

Contractor Termination Notice has the meaning given to it in clause 37.3 (Termination on Authority Default)

Contractor Warranted Data means the data and/or information relating to the Contractor and its Affiliates contained in Schedule 9 (Contractor Warranted Data)

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 (SI 1975/1023) or any replacement or amendment of that Order)

Customer Satisfaction Survey has the meaning given in clause 35.2 (Customer Satisfaction Survey)

Customer Satisfaction Survey Date means the date which is three (3) months prior to the Annual Service Report Date and each anniversary thereof during the Contract Period

Cut off Date has the meaning given to it in Clause 32A.4 (Utilities)

Cyclical Maintenance and Replacement Programme means the programme for Cyclical Maintenance and Renewal Works as contained in part 4 of Schedule 2 (Contractor's Proposals) as may be varied from time to time in accordance with the Review Procedure

Cyclical Maintenance and Renewal Works means the works relating to the maintenance of and renewal of elements of the Apartment Areas required to satisfy the Output Specification

Damage Funding shall have the meaning given to that expression in clause 56A.7 (Damage Funding)

Deductions means where the context so admits either or both of Unavailability Deductions and Performance Deductions

Deemed New Contract means an agreement on the same terms and conditions as this Agreement as at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to the final Services Commencement Date then the relevant Planned Services Commencement Dates which have not occurred shall be extended by such period as would have been granted to allow a New Contractor to achieve Services Commencement at the Phase in question
- (b) any Unavailability Deductions or Performance Deductions or Sub-Standard Performance Points and/or warning notices shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled
- (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date
- (d) the Leases shall continue to subsist in accordance with the terms and conditions of the Leases or new leases on the same terms and conditions as the Leases would be granted by the Authority to a New Contractor
- (e) the definition of Relevant Event shall be extended to include the completion of the purchase of any Apartments pursuant to the Right To Buy or the Preserved Right To Buy prior to or during the term of the Deemed New Contract provided that the completion of any such purchase occurring prior to the date of the Deemed New Contract shall be taken into account immediately following the date of the Deemed New Contract as between the Authority and the New Contractor by way of a Relevant Event being deemed to have occurred and provisions the same as clause 65 (Financial Adjustments) of this Agreement shall apply to leave the New Contractor in a no better and no worse position than it would have been in had the impact and/or exercise of the Right To Buy or Preserved Right To Buy been disregarded and not occurred; and
- (f) the provisions of Schedule 36 (Charitable Surplus) shall be disapplied

Default Interest means any increased margin that is payable to the Senior Lenders or which accrues as a result of any payment due to the Senior Lenders not being made on the date on which it is due

Defect means any defect in any Apartment Area, 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 an Apartment Area having regard to Good Industry Practice and to applicable British standards and codes of practice current at the date of such installation
- (d) defective preparation of the Site on which an Apartment Area is constructed or
- (e) adverse ground conditions at the Site on which an Apartment Area is constructed

Demolition Contract means the demolition contract for the Demolition of Laxthorpe & Kinthorpe High Rise Flats by Mechanical Means made between (1) the Authority and (2) Connell Borthers Limited (company number 06428951) dated 3rd November 2014.

Design and Construction Plan means the design and construction plan for the carrying out of the Works as contained in part 5 of Schedule 2 (Contractor's Proposals) as may be varied from time to time in accordance with the Review Procedure

Design Data means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Apartment Areas

Direct Agreement means the direct agreement dated on or about the date of this Agreement and made between the Authority, 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 prior to the date of this Agreement including:

- (a) Information Memorandum dated 9 January 2012
- (b) the Invitation to Submit Outline Solution dated 18 April 2012
- (c) the Invitation to Submit Detailed Solutions dated 18 July 2012
- (d) the Invitation to Submit Final Tenders dated 2 December 2013
- (e) the data room (including its contents) located at <https://award.commercedecisions.com/>
- (f) any other information made available prior to the Commencement Date save for any such information which is set out in this Agreement or other Project Document

Disclosed Title Matters means the matters set out in Schedule 26 (Disclosed Title Matters)

Disclosure and Barring Service means the non-departmental body created when the services of the Criminal Records Bureau and the Independent Safeguarding Authority merged pursuant to the Protection of Freedoms Act 2012

Discounted Residual Value Sum means the Residual Value Sum discounted back at [REDACTED] from the date on which the Residual Value Sum is shown to be payable in the Base Case to the Termination Date

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 for the resolution of disputes set out in clause 60 (Dispute Resolution)

Disrepair Action means the service of any Disrepair Notice or the commencement of any other action by a Tenant or other legal occupier of an Apartment in relation to or as a consequence of the disrepair of an Apartment whether under the terms of a Tenancy Agreement or otherwise

Disrepair Notice means any report made or notice served and/or any other action taken (whether by way of claim or counterclaim) by a Tenant of an Apartment or other legal occupier of 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 means:

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

Distribution Account has the meaning given to it in the Senior Credit Agreement

DPA means the Data Protection Act 1998

Early Repayment Fee has the meaning given to it in the Senior Credit Agreement

ECH Apartment means an extra care housing apartment designated for use by Tenants with extra care needs, (together with all supporting infrastructure and any associated curtilage) designed and constructed by the Contractor for rent by a Tenant under a Tenancy Agreement and the expression **ECH Apartments** shall be construed accordingly

ECH Apartment Area means the ECH Apartments and Common Parts to be provided by the Contractor on the Hawthorn Avenue Site, the Leads Road Site and the Hall Road Site and the expression **ECH Apartment Areas** shall be construed accordingly

Economically Advantageous means that the terms and conditions of a Utility Contract are, at the time of entry into such Utility Contract, reasonable and represent value for money to the users of the Utilities and in determining the same the following criteria (which are listed herein in no particular order) shall, without limitation, and to the extent they are relevant, be taken

into account: price, length of agreement, quality, after sales service and market conditions prevalent at the time of entry into a Utility Contract

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

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

Employee Liability Information means the employee liability information to be provided pursuant to Regulation 11 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

Equal Pay Legislation all and any anti-discrimination and equal pay opportunities laws, including but not limited to the Equal Pay Act 1970, the Equal Pay Directive (Council Directive 75/117/EEC), the Equal Treatment Directive (Council Directive 76/207/EEC), Article 117 of the Treaty of Rome, the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the Equality Act 2010

Equal Pay Ruling

- (a) a determination by an employment tribunal or court of competent jurisdiction or the settlement or compromise to which the Authority shall have consented in either case relating to any claim brought by any Retained Transferring Employee (where such claim is brought by the Retained Transferring Employee) on or before the Relevant Service Transfer Date under Equal Pay Legislation that the terms and conditions of employment of the Retained Transferring Employee relating to Pay contravene the Equal Pay Legislation; and/or
- (b) in relation to any Retained Transferring Employee (in relation to their period of employment until the Relevant Service Transfer Date) any alteration to the salaries and paycales prescribed by the National Joint Council terms and conditions in order to settle, address or compromise threatened or extant claim under the Equal Pay Legislation against local authority employers and/or employers engaged as at the date of this Agreement or substantially engaged in the provision of services to local authority employers

Equalities Legislation the Race Relations Act 1976, the Sex Discrimination Act 1975, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006 and the Equality Act 2010;

Equality Requirements means the requirements set out in Schedule 21 (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

Estimate Date has the meaning given to it in clause 46A.1 (EUV-SH of the Leases)

Estimated Change in Project Costs means in relation to clause 16 (Extensions of Time), clause 52 (Change in Law) and the Change Protocol the aggregate of any estimated increase in construction costs, operating costs, Whole Life Costs and financing costs less the aggregate of any estimated reduction in construction costs, operating costs, Whole Life 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 Authority as the market value of the Deemed New Contract

EUV-SH of the Leases means the estimated amount for which the premises comprised in and demised by the Leases would exchange at the Estimate Date between a willing buyer and a willing seller, in an arm's length transaction, after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion, as determined in accordance with clause 46A (EUV-SH of the Leases) on the following basis:

- (a) the premises will continue to be let by a body and used for social housing
- (b) at the Estimate Date, any regulatory body, in applying its criteria for approval, would not unreasonably fetter the vendor's ability to dispose of the premises to organisations intending to manage their housing stock in accordance with that regulatory body's requirements
- (c) premises temporarily vacant pending re-letting should be valued, if there is a letting demand, on the basis that the prospective purchaser intends to re-let them, rather than with vacant possession and
- (d) any subsequent sale would be subject to all of the above assumptions

or such other meaning as the Royal Institution of Chartered Surveyors may, from time to time, attribute to the term EUV-SH (Existing Use Value for Social Housing)

Exchange Rate has the meaning given to it in Clause 33.12.3 (European Monetary Union)

Excusing Event has the meaning given to it in Schedule 4 (Payment Mechanism)

Exempt Refinancing means:

- (a) any Refinancing that was fully taken into account in the calculation of the Unitary Charge
- (b) a change in taxation or change in accounting treatment
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
 - (i) breach of representations and warranties or undertakings

- (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements
 - (iii) late or non-provision of information, consents or licences
 - (iv) amendments to Sub-Contracts
 - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority))
 - (vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority) and/or amounts released from the Proceeds Account before the Final Construction Completion Date both as defined in the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority)) and which are given as a result of any failure by the Contractor to ensure that the construction work is performed in accordance with the agreed Construction Programme and which are notified in writing by the Contractor or the Senior Lenders to the Authority prior to being given
 - (vii) changes to milestones for drawdown and/or amounts released from the Proceeds Account before the Final Construction Completion Date (both the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority)) and which are given as a result of any failure by the Contractor to ensure that construction work is performed in accordance with the agreed Construction Programme and which are notified in writing by the Contractor or the Senior Lenders to the Authority prior to being given
 - (viii) failure by the Contractor to obtain any consent by statutory bodies required by the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority) or
 - (ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements) as at Financial Close (or as amended with the prior written approval of the Authority)
- (d) any amendment, variation or supplement of any agreement approved by the Authority as part of any Qualifying Variation under this Agreement
 - (e) any sale of shares in the Contractor by the Shareholders or securitisation of the existing rights and/or interests attaching to shares in the Contractor
 - (f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or
 - (g) any Qualifying Bank Transaction

Existing Buildings means the area shown coloured blue on the plan titled "Existing Building Plan" in relation to the Hall Road Site and set out at part 4 of Schedule 33

Exit Event means any of the following events:

- (a) the Authority serving an Expiry Option Notice on the Contractor or
- (b) the service of a Termination Notice in which the Authority has notified the Contractor that it is exercising its Termination Option

Expiry Date means the date being twenty five (25) years following the final Planned Services Commencement Date

Expiry Option shall have the meaning given to it in clause 46.1.2 (Assets)

Expiry Option Notice shall have the meaning given to it in clause 46.1.2 (Assets)

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 Warning Notice has the meaning given to it in clause 38.2 (Final Notice)

Financial Close has the meaning given to it in the Senior Credit Agreement, as at the date of this Agreement

Financial Panel has the meaning given to it in clause 60.4 (Identity of Adjudicator)

Financing Agreements means all or any of the agreements or instruments entered into or to be entered into by the Contractor or any of its Associated Companies relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments to be entered into by the Contractor or any of its Associated Companies relating to the re-scheduling of their indebtedness or any Refinancing)

Financing Default means an Event of Default under and as defined in the Senior Credit Agreement

First Contractor means the person with whom the Authority initially contracted for the provision of services which are similar to the Services

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

Footpath means the footpath at the Hall Road Site which is the subject of the Footpath Stopping up Application

Footpath Action means any court order or declaration made by a relevant court (including without limitation the granting of an injunction) arising out of or in connection with any

Footpath Challenge which renders unlawful and/or prevents the performance of all or part of the Contractor's obligations under this Agreement

Footpath Challenge means a challenge to the validity of the Footpath Stopping Up Order pursuant to S. 317 Highways Act 1980

Footpath Change has the meaning given to it in clause 14.B.2.5.1

Footpath Compensation Event has the meaning given to it in clause 14.B.2.4

Footpath Savings Change has the meaning given to it in clause 14.B.2.5.1

Footpath Stopping Up Application means the application for the stopping up of the Footpath at the Hall Road Site lodged by the Authority at Hull Magistrates Court on 27th November 2014

Footpath Stopping Up Order means an order to be made in respect of the Footpath Stopping Up Application for the permanent stopping up of the Footpath

Footpath Suspension Notice means a notice served by the Authority pursuant to clause 14.B.2.2

Force Majeure Event means the occurrence after the date of this Agreement of:

- (a) war, civil war, armed conflict or terrorism or
- (b) nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the actions or breach by the Contractor or its sub-contractors or
- (c) pressure waves caused by devices travelling at supersonic speeds

which directly causes either party (**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 42.1 (Force Majeure Termination Sum)

Future Service Provider has the meaning given to it in clause 29.5.1 (Contractor Indemnities)

General Change in Law means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law

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

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

Gross Monthly Charge has the meaning given to it in Schedule 4 (Payment Mechanism)

Ground Physical and Geophysical Investigation means the investigation of all the conditions of the Sites and of any extraneous materials in, on or under the Sites (including its surface and subsoil) to enable the Works to be carried out with due regard for those conditions and the seismic activity (if any) in the region of the Sites

Guidance means any applicable guidance or directions with which the Contractor or the Housing Management Contractor or the Landlord is bound to comply

Hall Road Junction means the table top junction to be built, in accordance with the Hall Road Section 278 Agreement, adjacent to the Hall Road Site as shown on the plan attached at part 5 of Schedule 33 and title "Sketch Layout of Proposed Raised Table Junction"

Hall Road Section 278 Agreement means the agreement to be entered into between the Building Contractor and the Authority under Section 278 of the Highways Act 1980 in respect of the works relating to the Hall Road Site

Hall Road Site means the Site edged red set out in part 3 of Schedule 33 (Site Plans)

Handback Standard means the standard to which the Apartment Areas or Apartments are to be handed back to the Authority on the Expiry Date if the Authority exercises its Expiry Option as set out in the Output Specification

Hawthorn Avenue Section 278 Agreement means the agreement to be entered into between the Building Contractor and the Authority under Section 278 of the Highways Act 1980 in respect of the [REDACTED] and works relating to the Hawthorn Avenue Site as shown in Curtins Consulting Limited's drawing 75110/HA/HWY/100 Rev C

Hawthorn Avenue Site means the Site edged red set out in part 1 of Schedule 33 (Site Plans)

Helpdesk shall have the meaning given to it in Schedule 4 (Payment Mechanism)

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

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 Management Agreement means subject to Clause 47.3 (Changes to Project Documents) the agreement in the Agreed Form between the Contractor and the Housing Management Contractor relating to the Housing Management Services

Housing Management Agreement Dispute has the meaning given to it in clause 60.17.2 (Similar Disputes)

Housing Management Contractor means The Riverside Group Limited (IP030938), or such other housing management contractor as the Contractor may, subject to clause 47.2 (Changes to Project Documents) appoint to provide the Housing Management Services

Housing Management Services means the services required to be provided by the Contractor pursuant to paragraph 5.9 (Tenancy Management) of the Output Specification

IC Services means the services to be provided by the Independent Certifier pursuant to and in accordance with the Independent Certifier's Deed of Appointment

Incumbent Provider Employee means all those persons employed by an incumbent contractor or sub-contractor engaged by the Authority prior to the Relevant Service Transfer Date to provide any of the Services or any service equivalent to any of the Services who are wholly or mainly engaged in the provision of such services

Indemnified Party has the meaning given to it in clause 56.6 (Notification of Claims)

Indemnifying Party has the meaning given to it in clause 56.6 (Notification of Claims)

Independent Certifier means the person appointed jointly by the Authority and the Contractor 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 Safeguarding Authority means the non-departmental public body established to operate the Vetting and Barring Scheme

Index has the meaning given to it in the definition of RPIx in this clause 1.1 (Definitions)

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 13 (Initial Financing Agreements), copies of which have been initialled by the parties for the purposes of identification

Instalment Date has the meaning given to it in clause 49.2 (Instalments)

Insurance Review Procedure means the procedure set out in paragraph 2 of Schedule 23 (Insurance Premium Risk Sharing)

Insurance Term means any terms and/or conditions required to be included in a policy of insurance by clause 57.1 (Requirement to Maintain) and/or Schedule 11 (Insurances) but excluding any risk

Insurance Undertaking has the meaning given in the rules from time to time of the Financial Services Authority

Intellectual Property Rights means any and all patents, trade marks, service marks, copyrights database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto

Interface Agreement means the agreement between the Contractor, the Building Contractor, the Landlord, the Housing Management Contractor and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor

Interim Project Report means a report to be produced by the Contractor in accordance with clause 74.8 detailing the circumstances which led to the Financing Default (including, where applicable, relevant financial information) and should include the steps being taken by the Contractor to mitigate or rectify the Financing Default and the Contractor's estimated timescale for mitigation or rectification and any additional relevant information which the Authority should be aware of or request

Joint Insurance Account means the joint bank account in the names of both the Authority and the Contractor, having account number [REDACTED] and held with Sumitomo Mitsui Banking Corporation

Judicial Proceedings means the grant of permission for an application and any subsequent application for judicial review or related process under Part 54 of the Civil Procedure Rules in respect of the Planning Permission

Judicial Proceedings Action means any court order or declaration made by a relevant court (including without limitation the granting of an injunction) arising out of or in connection with any Judicial Proceedings which renders unlawful and/or prevents the performance of all or part of the Contractor's obligations under this Agreement

Junior Debt means all amounts outstanding at the Termination Date under the Subordinated Financing Agreements

Landlord means the Riverside Group Limited (IP30938) to the extent acting in its capacity as landlord of the Tenants, or such other replacement landlord from time to time

Leads Road Site means the Site edged red set out in part 2 of Schedule 33 (Site Plans)

Lease means each of the leases in the form set out in Schedule 31 (Form of Lease) as granted or to be granted by the Authority to the Contractor in respect of each Site in accordance with clause 8 (Nature of Land Interests) and the expression **Leases** shall be construed accordingly

Lease Declaration shall have the meaning given to it in clause 8.3.2 (Exclusion of Security)

Lease Notice shall have the meaning given to it in clause 8.3.1 (Exclusion of Security)

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

Lender RV Element [REDACTED]

Lifecycle Account means the bank account in the name of the Contractor, having account number [REDACTED] and held with Sumitomo Mitsui Banking Corporation

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 and ownership of sites pursuant to leases (in each case the same as or similar to the Agreement and the Leases) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which this Agreement may be novated and the Leases assigned shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes

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 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 has been given in relation to the last Phase

Long Stop Date means:

- (a) in the case of the Hawthorn Avenue Site, the date being twelve months after the Planned Services Commencement Date for the Hawthorn Avenue Site
- (b) in the case of the Leads Road Site, the date being twelve months after the Planned Services Commencement Date for the Leads Road Site
- (c) in the case of the Hall Road Site, the date being twelve months after the Planned Services Commencement Date for the Hall Road Site

in each case as may be amended by the terms of this Agreement

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

Margin has the meaning given in the Senior Financing Agreement as at the date immediately prior to the relevant Qualifying Refinancing

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 the Contract following the Refinancing save that, where the replacement finance is a bond, for the purpose of calculating the effect of the change to the Margin, the margin on the bond shall be the rate of interest on the bond less the yield on the relevant reference gilt in place on issue of the bond

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 the Contract following the Refinancing

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 Gross Monthly Charge under Schedule 4 (Payment Mechanism) in the month immediately preceding the Termination Date, less an amount equal to any Unavailability Deductions that were made for a Zone which was Unavailable at the Termination Date but which has subsequently become Available whether as a result of the Authority incurring Rectification Costs or otherwise

Maximum Rents and Service Charges means in respect of a month, the Rents and Service Charges payable by Tenants to the Landlord under and pursuant to their Tenancy Agreement calculated on the assumption that all Apartments are tenanted and Rents and Service Charges are being paid in full by Tenants in respect of all Apartments

Maximum Unitary Charge means in respect of a month, the Gross Monthly Charge payable in respect of that month before any deductions are made under clause 33 (Payment Provisions) and Schedule 4 (Payment Mechanism) but allowing for indexation in accordance with Schedule 4 (Payment Mechanism)

Monetary Union has the meaning given to it in clause 33.12.2 (European Monetary Union)

Monthly Report has the meaning given to it in Schedule 4 (Payment Mechanism)

Named Employee has the meaning given to it in clause 31.1.1 (Disclosure and Barring)

Net Monthly Payment has the meaning given to it in Schedule 4 (Payment Mechanism)

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 Contract means an agreement on the same terms and conditions as this Agreement at the Termination Date, but with the following amendments:

- (a) if this Agreement is terminated prior to the final Services Commencement Date, then the relevant Planned Services Commencement Dates which have not occurred shall be extended by a period to allow a New Contractor to achieve Services Commencement at the Phase in question
- (b) any accrued Unavailability Deductions or Performance Deductions or Sub-Standard Performance Points and/or warning notices shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled

- (c) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date
- (d) the Leases shall continue to subsist in accordance with the terms and conditions of the Leases or new leases on the same terms and conditions as the Leases would be granted by the Authority
- (e) the definition of Relevant Event shall be extended to include the completion of the purchase of any Apartments pursuant to the Right To Buy or the Preserved Right To Buy prior to or during the term of the New Contract provided that the completion of any such purchase occurring prior to the date of the New Contract shall be taken into account immediately following the date of the New Contract as between the Authority and the New Contractor by way of a Relevant Event being deemed to have occurred and provisions the same as clause 65 (Financial Adjustments) of this Agreement shall apply to leave the New Contractor in a no better and no worse position than it would have been in had the impact and/or exercise of the Right To Buy or Preserved Right To Buy been disregarded and not occurred
- (f) the provisions of Schedule 36 (Charitable Surplus) shall be disappplied; and
- (g) 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 Authority

New Employees means those employees employed by the Contractor and/or any Sub-Contractor to provide the Services who will be working alongside the Retained Transferring Employees

Non Collection Deduction means for any month or part of a month for the period from the Termination Date to the Compensation Date an amount equal to the aggregate of:

- (a) Rents and Service Charges not paid by Tenants or not collected by the Housing Management Contractor for any Apartments which were Void in that month plus
- (b) any Rents or Service Charges which first become due and payable in that month which were not paid by Tenants and not collected by the Housing Management Contractor in part or at all in that month

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 paragraphs (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 Contractor's Associated Company's ability to carry out any such refinancing or other arrangement which would have a similar effect

Notification is as defined in clause 29.2 (Offer of Employment/Transferring Employees and Retained Transferring Employees)

Occupier means any member of a Tenant's household or other lawful occupier of the relevant Apartment

Offer Period is as defined in clause 29.2 (Offer of Employment/Transferring Employees and Retained Transferring Employees)

Ombudsman means the Local Government Ombudsman

Operating Manual has the meaning given to it in clause 31.10 (Operating Manual)

Operational Panel has the meaning given to it in clause 60.4 (Identity of Adjudicator)

Option Period has the meaning given to it in Clause 59.4 (Contractor's Option)

Original Senior Commitment means the amount committed under the Senior Financing Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation)

Output Specification means the output specification for the Works and Services contained in Schedule 1 (Output Specification)

Outstanding Principal means the principal amount outstanding at the Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the Senior Financing Agreement less an amount equal to the Lender RV Element

Pay means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which a Retained Transferring Employee receives either directly or indirectly in respect of his or her employment with the Authority

Payment Period means each month during the Services Period

Performance Deductions has the meaning given to it in Schedule 4 (Payment Mechanism)

Performance Ratchet has the meaning given to it in Schedule 4 (Payment Mechanism)

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)

Performance Standards means the standards set out at Annex III of Schedule 1 (Output Specification)

Permitted Borrowing means without double counting, any:

- (a) advance to the Contractor under the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of clause 47.3.2(a)), provided that such advance is not made under any Committed Standby Facility
- (b) Additional Permitted Borrowing
- (c) advance to the Contractor 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(a)) 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 fourteen (14) days or recurred in three (3) or more months within the six (6) month period 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 Authority or obtained by the Contractor in the course of performing the Services and/or the Works

Personnel means the employees, servants, agents, sub-contractors or other representatives, of the Contractor, or of any sub-contractor, involved directly, or indirectly, in the provision of the Services

PFI means the Government's Private Finance Initiative or any similar or replacement initiative

PFI Contractor means a person that has contracted with the Government, a Local Authority or other public and statutory body to provide services under the PFI

Phase means a phase of the Works comprising the Apartment Areas identified in column 1 of the table set out at Schedule 27 (Phases, Start on Site Dates and Planned Services Commencement Dates)

Physical Damage Policies has the meaning given to it in clause 58.1 (Application of Insurance Proceeds)

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 works of Planned Maintenance for Apartment Areas as contained in part 6 of Schedule 2 (Contractor's Proposals) as may be varied from time to time in accordance with the Review Procedure

Planned Services Commencement Date means in relation to each Phase the date shown as the Planned Services Commencement Date in column 3 of the table set out at Schedule 27 (Phases, Start on Site Dates and Planned Services Commencement Dates) or such later date as may be allowed in accordance with this Agreement

Planning Permission means

- (a) the detailed planning consent referenced 14/00832/FULL and dated 17 October 2014 in respect of the Leads Road Site;
- (b) the detailed planning consent referenced 14/00830/FULL dated 17 October 2014 in respect of the Hall Road Site; and
- (c) the detailed planning consents referenced 14/00831/FULL 17 October 2014 in respect of the Hawthorn Avenue Site.

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 and the Maximum Rents and Service Charges that would have first become due and payable in that month 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 Non Collection Deduction for that month
- (c) the Rectification Costs incurred by the Authority in that month and
- (d) (where relevant) the amount by which the Post Termination Service Amount for the previous month was less than zero

Preserved Right To Buy means the preserved right to buy pursuant to Section 118 of the 1985 Act

Prescribed Rate means two per cent above the base rate from time to time of the Bank of England

Pre-Refinancing Equity IRR means the nominal post-tax (i.e. post tax with respect to the Contractor but pre tax with respect to the Shareholders) Equity IRR calculated immediately prior to the Refinancing

Principal Building Sub-Contractor means a sub-contractor of any tier engaged by the Building Contractor to undertake design in respect of any of the following parts of the Works:

- (a) piling;
- (b) beam and block;
- (c) pre-cast stairs;
- (d) pre-cast lift shaft;
- (e) mechanical and electrical;
- (f) structural steelwork;
- (g) commercial kitchen;
- (h) lifts;
- (i) roof trusses;
- (j) assistive technology;
- (k) sprinklers;
- (l) curtain walling; and
- (m) timber framing.

Professional Team means the architects, structural engineers and mechanical and electrical engineers employed by the Building Contractor in connection with the Works

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority
- (b) entering into this Agreement or any other agreement with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority or
- (c) committing any offence:
 - (i) under the Bribery Act 2010
 - (ii) under Legislation creating offences in respect of fraudulent acts or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Authority
- (d) any act or omission which leads to the commission of an offence under Section 117 of the Local Government Act 1972
- (e) defrauding or attempting to defraud or conspiring to defraud the Authority

Prohibited Employment Grounds 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 and maternity or marital status (including Civil Partnerships) contrary to Part II (Discrimination in the employment field) of the Sex Discrimination Act 1975, the Equal Pay Act 1970 and the Equality Act 2010
- (c) disability contrary to Part II (Employment) of the Disability Discrimination Act 1995, the Equality Act 2006 and the Equality Act 2010
- (d) religion or belief contrary to Part II (Discrimination in employment and vocational training) of the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2010
- (e) sexual orientation contrary to Part II (Discrimination in employment and vocational training) of the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act 2010 and/or
- (f) age contrary to Part II (Discrimination in employment and vocational training) of the Employment Equality (Age) Regulations 2006 and the Equality Act 2010

Prohibited Grounds 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 and maternity or marital status (including Civil Partnerships) contrary to Part III (Discrimination in other fields) of the Sex Discrimination Act 1975 and the Equality Act 2010
- (c) disability contrary to Part III (Discrimination in other Areas) of the Disability Discrimination Act 1995 and the Equality Act 2010
- (d) religion or belief contrary to Part III (Other Unlawful Acts) of the Employment Equality (Religion or Belief) Regulations 2003 and the Equality Act 2010
- (e) sexual orientation contrary to Part III (Other Unlawful Acts) of the Employment Equality (Sexual Orientation) Regulations 2003 and the Equality Act 2010 and/or
- (f) age contrary to Part III (Other Unlawful Acts) of the Employment Equality (Age) Regulations 2006 and the Equality Act 2010

Project means the provision, management and maintenance of Contractor owned apartments and common facilities in the City of Hull and the provision of housing and facilities management services, all pursuant to the Private Finance Initiative and the terms of this 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
- (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 14 (Project Documents), copies of which have been initialled by the parties for the purposes of identification

Project Liaison Group has the meaning given to it in paragraph 1.1 of Schedule 8 (Liaison Procedure)

Project Records means the reports to be provided by the Contractor pursuant to clause 74.7.8, containing the information set out within Appendix 4 (Form of Project Report) to this Agreement

Public Safety Incident - an incident, which results in serious personal injury to or death of any Authority Related Party or Tenant which may have been caused by a negligent act or omission of the Contractor or any Contractor Related Party in the performance of the Works and/or the Services

Qualification Criteria means the criteria that the Authority requires tenderers to meet as part of the Tender Process which (subject to compliance with the procurement regulations) shall be:

- (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 Works and/or the Services and
- (f) any other tender criteria agreed by the Authority and the Contractor

Qualifying Bank Transaction means:

- (a) the syndication by a Senior Lender, 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 Lender of any rights of participation, or the disposition by a Senior Lender 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 Lender
 - (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state
 - (iii) a local authority or public authority
 - (iv) a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least ten (10) million pounds (£10,000,000) (or its equivalent in any other currency at the relevant time)
 - (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two (2) years) at least fifty (50) members and assets under management of at least ten (10) million pounds (£10,000,000) (or its equivalent in any other currency at the relevant time)
 - (vi) an EEA or Swiss Insurance Undertaking
 - (vii) a Regulated Collective Investment Scheme; or
 - (viii) any other institution in respect of which the prior written consent of the Authority has been given and/or

- (c) the grant by a Senior Lender of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Contractor, whether by way of security or otherwise, in favour of:
 - (i) any other Senior Lender
 - (ii) any institution specified in paragraphs (b)(ii) to (vii) above or
 - (iii) any other institution in respect of which the prior written consent of the Authority has been given

Qualifying Change in Law means:

- (a) a Discriminatory Change in Law or
- (b) a Specific Change in Law,

which was not foreseeable at the date of this Agreement

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

and in respect of which any documents or amendments to the Project Documents which are required to give effect to such change in the Works and/or the Services or Qualifying Change in Law have become unconditional in all respects

Recipient has the meaning given to it in clause 33.11 (VAT on Payments)

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 Authority in a particular month or part of a month in ensuring that the Services are available

Rectification Period has the meaning given to it in Schedule 4 (Payment Mechanism)

Redundancy has the meaning set out in section 139 of the Employment Rights Act 1996

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

Refinancing Gain 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 80.9.1 (Authority Right to Request Refinancing)

Registered Provider means any entity appearing in the register of providers of social housing maintained by the Regulation Committee

Regulated Collective Investment Scheme has the meaning given in the rules from time to time of the Financial Services Authority

Regulation Committee means the regulation committee of the Homes and Communities Agency established by the Localism Act 2011 or its statutory successor or successors from time to time

Reinstatement Plan has the meaning given to it in clause 58.3 (Obligations)

Reinstatement Works has the meaning given to it in clause 58.3 (Obligations)

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

Relevant Authority 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 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), 35 (Best Value), 52 (Change in Law) and the Change Protocol

Relevant Incident has the meaning given to it in clause 58.3 (Obligations)

Relevant Payment has the meaning given to it in Clause 59.4 (Contractor's Option)

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 Date means the transfer on one or more dates agreed by the parties (each a **Relevant Service Transfer Date**) to the Contractor of responsibility for provision of (or procuring the provision by Sub-Contractors of) the Services in accordance with this Agreement

Relevant Transfer means a relevant transfer for the purposes of TUPE

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 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 disputegenerally affecting the construction, housing or facilities management industry or a significant sector of it or
- (g) the occurrence of an Access Refusal Event

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

Rent means the rent to be charged by the Landlord to a Tenant under a Tenancy Agreement in accordance with clause 33A (Rents) and the expression **Rents** shall be construed accordingly

Rent Notice has the meaning given to it in Clause 33A.2 (Information)

Rent Influencing Regime means any guidance or legislation that is applicable to a Registered Provider and which relates to the setting, calculating and/or charging of rents and service charges in the social housing sector

Repair Cost means the cost of any repair or replacement needed to ensure that following any incident of damage the Site (or any part thereof) is returned to the original standard (or equivalent) required in accordance with this Agreement

Replies to Enquiries means:

- (a) the replies to Commercial Property Standard Enquiries (CPSE 1 (version 3.4)) in respect of the Hall Road Site dated 11 December 2014;
- (b) the replies to Commercial Property Standard Enquiries (CPSE 1 (version 3.4)) in respect of the Hawthorn Avenue Site dated 11 December 2014; ; and
- (c) replies to Commercial Property Standard Enquiries (CPSE 1 (version 3.4)) in respect of the Leads Road Site dated 11 December 2014;

Request for Information has the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term **request** shall apply)

Required Action has the meaning given to it in Clause 54.3 (Action by the Authority)

Required Insurances means the insurances specified in schedule 11 (Insurances)

Required Standard has the meaning given to it in clause 41.4 (Results of Survey)

Residual Value Overage means, in circumstances where the EUV-SH of the Leases is greater than the Discounted Residual Value Sum, the EUV-SH of the Leases less the Discounted Residual Value Sum

Residual Value Sum means [REDACTED]

Resolution Date means:

(a) where Works have been suspended pursuant to clause 14.B.2.2 and where there has not been a Footpath Challenge, either:

- (i) the date upon which a Footpath Stopping Up Order is made in respect to the Footpath Stopping Up Application; or
- (ii) providing there is no subsisting Footpath Action, the date when the Authority confirms by written notice to the Contractor that either:
 - (A) it is satisfied (in its absolute discretion) that an alternative means of dealing with the Footpath (including without limitation diversion of the

same) has been satisfactorily achieved by way of an Authority Change in accordance with clause 14.B.2.5; or

- (B) it is otherwise satisfied (in its absolute discretion), having regard to any residual risk, that it is commercially prudent that the Works should recommence (provided that the Contractor would not be in breach of any Legislation as a result of the same);
- (b) where Works have been suspended pursuant to clause 14B.2.2 following a Footpath Challenge, either:
- (i) the date upon which the Footpath Challenge is finally dismissed or withdrawn; or
 - (ii) providing there is no subsisting Footpath Action, the date when the Authority confirms by written notice to the Contractor that:
 - (A) it is satisfied (in its absolute discretion) that an alternative means of dealing with the Footpath (including without limitation diversion of the same) has been satisfactorily achieved by way of an Authority Change in accordance with clause 14B.2.5; or
 - (B) it is otherwise satisfied (in its absolute discretion), having regard to any residual risk, that it is commercially prudent that the Works should recommence (provided that the Contractor would not be in breach of any Legislation as a result of the same)

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 subject to Clause 47.2 (Changes to Project Documents), 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 The Riverside Group Limited (IP30938) or such other responsive repairs and cyclical maintenance and renewal contractor as the Contractor may, subject to Clause 47.2 (Changes to Project Documents), appoint to provide that part of the Services which involve Cyclical Maintenance and Renewal Works and Responsive Repairs

Responsive Repairs and Cyclical Maintenance and Renewal Contract Dispute has the meaning given to it in clause 60.17 (Similar Disputes)

Restricted Share Transfer means the transfer of shares or any interest in shares of the Contractor to any Unsuitable Third Party

Retained Authority Transferring Employee means a Retained Transferring Employee who was an Authority Employee immediately prior to the Relevant Service Transfer Date

Retained Incumbent Provider Transferring Employee means a Retained Transferring Employee who was an Incumbent Provider Employee immediately prior to the Relevant Service Transfer Date

Retained Transferring Employee is as defined in clause 29.2 (Offer of Employment/Transferring Employees and Retained Transferring Employees)

Retendering Information has the meaning given to it in clause 29.6 (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 29.7 (Termination/Expiry of Agreement)

Returning Employees means those employees wholly or mainly engaged in the provision of the Services as the case may be immediately before the expiry or termination of part or all of this Agreement whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE

Reviewable Design Data means the plans, drawings, documents and information relating to the Works set out in Schedule 35 (Reviewable Design Data) to the extent that they are not included in the Contractor's Proposals at the Commencement Date

Review Date means 1 April 2015 and any subsequent anniversary of that date

Review Procedure means the procedure set out in Schedule 6 (Review Procedure)

Revised Senior Debt Termination Amount means subject to clause 47.3 (Changes to 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, from the Contractor to the Senior Lenders in respect of Permitted Borrowing
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs (including but without double counting any Aviva ERF), payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement subject to the Contractor and the Senior Lenders 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 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 Distribution Account) held by or on behalf of the Contractor on the Termination Date
 - (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities
 - (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Agreement

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

if the resultant calculation is a negative figure the amount shall be treated as nil

Right To Buy means the right to buy pursuant to Section 118 of the 1985 Act

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 60 (Dispute Resolution)

Schedule means a schedule numbered 1 to 36 to this Agreement

Security Trustee means Aviva Public Private Finance Limited (Company Registration Number 2334210) of Sentinal House, 37 Surrey Street, Norwich NR1 3UY in the capacity as security trustee to the Senior Lenders under the Financing Agreements

Senior Credit Agreement means the credit agreement entered into on or about the date of this Agreement between amongst others Aviva Public Private Finance Limited and the Contractor as at the date of this Agreement or as amended with prior written approval of the Authority pursuant to clause 47.3 (Changes to Financing Agreements)

Senior Debt means the financing provided by the Senior Lenders 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 Financing Agreements means those of the Financing Agreements listed in part 1 of Schedule 13 (Initial Financing Agreements) as at the date of this Agreement or, without prejudice to clause 47.3 as the same may be amended as allowed by clause 47.3.1

Senior Lenders means persons providing finance to the Contractor under the Senior Financing Agreements

Senior Lender's Base Case means the Financial Model as defined in the Senior Credit Agreement

Service Charge means the service charge to be charged by the Landlord to a Tenant under a Tenancy Agreement in accordance with clause 33B (Service Charges) and the expression **Service Charges** shall be construed accordingly

Service Chargeable Lifecycle Items means the door entry systems, closed circuit television, fire alarm systems and lifts to the extent that the same are funded by the Tenants (whether through the payment of Services Charges or otherwise)

Service Charge Services means any services provided or procured by the Landlord for the Common Parts for which the Landlord is entitled to recover a Service Charge under a Tenancy Agreement

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

Services means the services required to be provided by the Contractor to the Apartment Areas to satisfy paragraph 5 and Annex III of the Output Specification

Services Adaptations Threshold means, in respect of Adaptations Works undertaken at any Site following the issue of the relevant Certificate of Availability, the aggregate of:

- (i) an aggregate amount of [REDACTED] (Indexed),
- (ii) in respect of the first Contract Year following the final Services Commencement Date, any unspent element of the Works Adaptations Threshold, and
- (iii) any amount carried forward pursuant to clause 32.5.3

Services Commencement means commencement of the Services

Services Commencement Date means in respect of each Phase, the date falling the day after the issue of the Certificate of Availability for that Phase

Services Delivery Plan means the plan for the delivery of the Services as contained in part 2 of Schedule 2 (Contractor's Proposals) as may be varied from time to time in accordance with the Review Procedure

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 means the period specified in clause 3.2 (Duration)

Services Specification means the specification contained in paragraph 5 of Schedule 1 (Output Specification)

Shareholder means any person from time to time holding share capital in the Contractor or its Holding Company

Short Stay Apartment means an apartment designated for use by persons with temporary accommodation needs (together with all supporting infrastructure and any associated curtilage) designed and construed by the Contractor for use by the Authority and the expression **Short Stay Apartments** shall be construed accordingly

Short Stay Apartment Area means the Short Stay Apartments and Common Parts to be provided by the Contractor on the Hawthorn Avenue Site

Single Data List means the Single Data List for Central Government Departments (2011-12) published by the Department for Communities and Local Government on 14 April 2011,

containing a comprehensive list of all data required of local government by central government, and any subsequent lists of central government's data requirements from local government, as may be issued by Communities and Local Government or any other competent authority from time to time

Site means the area edged red on the relevant Site Plan together with the Apartment Areas and the service ducts and media for all utilities and services serving the Apartment Areas and the expression Sites shall be construed accordingly

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

Site Plan means the plan of each Site set out in Schedule 33 (Site Plans) and the expression Site Plans shall be construed accordingly

Snagging Items means minor defects, deficiencies or omissions which do not prevent the Independent Certifier from issuing a Certificate of Availability

Snagging List means the list to be prepared by the Independent Certifier in accordance with clause 20.7.1 (Snagging Items) containing particulars of Snagging Items

Snagging Programme has the meaning given to it in clause 20.7.1 (Snagging Items)

Specific Change in Law means a Change in Law which specifically refers to the provision of services the same or similar to the Care Services and/or the Catering Service which results in a change to the Works and/or Services provided by the Contractor to support the provision of the Care Services and/or the Catering Service

Start on Site Date means in relation to each Phase, the date shown as the Start on Site Date in column 2 of the table set out at Schedule 27 (Phases, Start on Site Dates and Planned Services Commencement Dates) or such other date as may be allowed in accordance with the terms of this Agreement

Sub-Contractor means each of the Building Contractor, the Housing Management Contractor and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor or any other 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

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 and
- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms provided that any Losses in respect of loss of profit shall be limited to loss of profits for a period of six months from the Termination Date and
- (c) the Contractor and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses

Subordinated Financing Agreements means those of the Financing Agreements listed in part 2 of Schedule 13 (Initial Financing Agreements) or as amended with the prior written approval of the Authority

Subordinated Lenders means a person providing finance under the Subordinated Financing Agreements

Subsequent Contractor means another person after the First Contractor with whom the Authority subsequently contracts for the provision of the Services

Subsidiary has the meaning given to it in Section 1159 of the Companies Act 2006

Sub-Standard Performance Points has the meaning given to it in Schedule 4 (Payment Mechanism)

Substantial Completion means in relation to each Phase that each such Phase is certified by the Independent Certifier as having the building envelope complete and being ready for internal fit out with external/off site works (other than final road/car park surfacing and planting/landscaping) and internal walls completed, services to meters and drainage connected, roads provided to the boundary of the Phase completed and otherwise wind and watertight and a Certificate of Substantial Completion has been issued to that effect in accordance with clause 20.2 (Issue of Certificate of Substantial Completion)

Suitable Substitute Contractor means a person approved by the Authority (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)

Suspension Notice has the meaning given to it in Clause 14A.2.1 (Judicial Proceedings)

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 Lenders for the purposes of providing technical support or reports

Tenancy Agreement means a tenancy agreement governing the occupancy by a Tenant of an Apartment in the form set out in Appendix 3, as amended from time to time in accordance with clause 28.3.4 (Tenancy Agreement)

Tenant means the person who from time to time is a tenant of an Apartment under a Tenancy Agreement

Tender Costs means the reasonable and proper costs of the Authority incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Contract

Tender Process means the process by which the Authority requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new service provider in accordance with clause 43.2 (Retendering Procedure)

Tender Process Monitor means a third party appointed by the Contractor under the clause 43.2 (Retendering Procedure)

Termination Date means the date of early termination of this Agreement in accordance with its terms

Termination Date Discount Rate means a discount rate expressed as:

$$[(1 + R + \text{Gilt B} - \text{Gilt A}) \times (1+I) - 1]$$

where:

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

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

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

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

Termination Notice means a notice of termination issued in accordance with this Agreement

Termination Option shall have the meaning given to it in clause 46.1.1 (Assets)

Termination Sum means any compensation payable by the Authority 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 Authority Default/Voluntary Termination) and 45 (Compensation on

Corrupt Gifts, Fraud and Refinancing Breaches) (excluding the Adjusted Highest Compliant Tender Price)

Third Party Claim has the meaning given to it in Clause 56.6 (Notification of Claims)

Threshold Equity IRR means [REDACTED]

Title Compensation Event means the exercise or enforcement of any of the rights, claims or covenants referred to in Schedule 37 (Title Compensation Events)

TPL Risk means a risk which is required to be insured under the third party liability insurance policy

Transferring Employee is as defined in clause 29.2 (Offer of Employment/Transferring Employees and Retained Transferring Employees)

Transferring Employee Costs means, where the employment of a Transferring Employee is terminated pursuant to clause 29.2.2:

- (a) any notice entitlement (whether statutory or contractual), any redundancy entitlement (whether statutory or contractual) and any other contractual termination entitlements and
- (b) any direct employment costs associated with the employment of each Transferring Employee by the Contractor or the relevant Sub-Contractor in the period from the Relevant Service Transfer Date up to and including the date of termination of such Transferring Employee's employment

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any other regulations enacted for the purposes of implementing the Directive into English law

Unavailable has the meaning given to it in Schedule 4 (Payment Mechanism)

Unavailability Deduction has the meaning given to it in Schedule 4 (Payment Mechanism)

Unavailability Ratchet Factor has the meaning given to it in Schedule 4 (Payment Mechanism)

Underlease means the underlease in the form set out in Schedule 32 (Form of Underlease) as granted or to be granted by the Landlord to the Authority in respect of the Short Stay Apartment Area in accordance with clause 8A (Grant of Underlease)

Uninsurable 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 relevant 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 omission of the Contractor or any Contractor Related Party

shall not be treated as Uninsured Losses

Unitary Charge has the meaning given to Gross Monthly Charge in Schedule 4 (Payment Mechanism)

Unsuitable Third Party means 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 Authority, incompatible with the provision of Services to the Authority or
- (c) any person whose activities, in the reasonable opinion of the Authority, pose or could pose a threat to national security

Utilities means gas, water and electricity and the expression **Utility** shall be construed accordingly

Utility Contract has the meaning given to it in clause 32A.1 (Utilities)

VAT means value added taxes

Void means an ECH Apartment which is not occupied by a Tenant (for whatever reason) under a Tenancy Agreement

Whole Life Costs has the meaning given to that term in Schedule 25 (Change Protocol)

Works Delivery Plans means the proposals for the provision of the Apartment Areas to satisfy the requirements of paragraphs 3 and 4 and Annex I of the Output Specification, as contained in part 1 of Schedule 2 (Contractor's Proposals) as may be varied from time to time in accordance with the Review Procedure

Works means all of the works (including design and works necessary for obtaining access to the Sites or Apartment Areas) to be undertaken in accordance with this Agreement to satisfy the Output Specification

Works Adaptations Threshold means, in respect of Adaptations Works undertaken at any Site prior to the issue of the relevant Certificate of Availability, an aggregate amount of [REDACTED]

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)

Zone has the meaning given to that term in Schedule 4 (Payment Mechanism)

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, paragraph, Schedule, recital, Appendix or annex is, except where expressly stated to the contrary, a reference to such clause, paragraph, Schedule, recital, Appendix or annex of and to this Agreement;
- 1.2.4 save where otherwise provided for 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 instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.7 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;
- 1.2.9 reference to a document being **in the Agreed Form** is reference to the form of the document agreed between the parties and for the purposes of identification initialled by each of them on their behalf; and
- 1.2.10 any reference to any government department, non departmental public body (**NPDB**), agency or public sector body shall include any successors from time to time which substantially perform any of the functions that had been previously performed by it or its permitted assignees or transferees.

1.3 **Schedules**

The Schedules and Appendices 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 1 April 2014 prices multiplied by:

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

where I_1 is the value of RPIx most recently published prior to the relevant calculation date, and I_2 is the value of RPIx on 1 April 2014.

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 1 (Output Specification);
- 1.5.3 the Schedules, (excluding Schedule 1 (Output Specification) and Schedule 2 (Contractor's Proposals));
- 1.5.4 Appendix 1 (Allocation Protocol), Appendix 2 (Access Protocol), Appendix 3 (Tenancy Agreement) and Appendix 4 (Form of Project Report);
- 1.5.5 Schedule 2 (Contractor's Proposals).

1.6 **Approval by the Authority**

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

1.7 **Responsibility for Related Parties**

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

1.8 **Contractor Remains Responsible**

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

2 **Exclusion of Legislation**

2.1 **Exclusion Order**

This Agreement is entered into under the PFI. This Agreement is excluded from section 110(A) of the Housing Grants, Construction and Regeneration Act 1996 by the operation of the Construction Contracts (England) Exclusion Order (SI2011/2332).

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 clauses 29.5, 29.6.4(a), 29.7.2(b), 29.7.3, 29.8.1(b) and 29.10 which shall be enforceable by a Future Service Provider in the case where the Authority has assigned the benefit of such clauses pursuant to clause 29.9.2 of this Agreement.

3 Commencement and Duration

3.1 Commencement

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

3.2 Duration

The Services Period for each Phase will commence on the Services Commencement Date for that Phase and terminate on the earlier of:

3.2.1 the Expiry Date; and

3.2.2 the Termination Date.

4 Collateral Warranties

The Contractor shall:

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

4.1.1 the Building Contract with the Building Contractor;

4.1.2 the Responsive Repairs and Cyclical Maintenance and Renewal Contract with the Responsive Repairs and Cyclical Maintenance and Renewal Contractor;

4.1.3 the Housing Management Agreement with the Housing Management Contractor;

4.2 on or before the date of this Agreement deliver the Collateral Warranties from the Building Contractor, the Principal Building Sub-Contractor, the members of the Professional Team, the Responsive Repair and Cyclical Maintenance and Renewal Contractor and the Housing Management Contractor to the Authority (except where any Principal Building Sub-Contractor has not been appointed as at the date of this Agreement in which case the Contractor shall deliver to the Authority a duly executed agreement from the relevant Principal Building Sub-Contractor in the Agreed Form (or with such other amendments as agreed with the Authority such approval not to be unreasonably withheld or delayed)) of the relevant Collateral Warranty within ten (10) Business Days of its appointment; and

4.3 not engage any new Building Contractor, Principal Building Sub-Contractor, Responsive Repairs and Cyclical Maintenance and Renewal Contractor or Housing Management Contractor or any new member of the Professional Team in connection with the Works and/or Services unless such person has delivered to the Authority a duly executed agreement substantially in the Agreed Form of the relevant Collateral Warranty duly executed as a deed and in each case such Collateral Warranty must be delivered to the Authority before such entity enters onto any Site.

5 General Warranties

5.1 Contractor Warranties

The Contractor warrants and represents to the Authority that on the date hereof:

- 5.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 5.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents;
- 5.1.3 all necessary action to authorise the execution of and the performance of its obligations under the Project Documents has been taken or, in the case of any Project Document executed after the date of this Agreement, will be taken before such execution;
- 5.1.4 the obligations expressed to be assumed by the Contractor under the Project Documents are, or in the case of any Project Document executed after the date of this Agreement will be, legal, valid, binding and enforceable to the extent permitted by law and each Project Document is or will be in the proper form for enforcement in England;
- 5.1.5 it will procure that each and every one of the Apartment Areas with regard to which a Certificate of Availability is issued has or will have the benefit of the appropriate NHBC "Buildmark" structural defects cover or such other defects cover acceptable to mortgage lenders under the most recently published guidance issued by the Council of Mortgage Lenders, or cover in such other form as shall be approved by the Authority from time to time; and
- 5.1.6 the execution, delivery and performance by it of the Project Documents does not contravene any provision of:
 - (a) any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
 - (b) the Memorandum and Articles of Association of the Contractor;
 - (c) any order or decree of any court or arbitrator which is binding on the Contractor; or
 - (d) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 5.1.7 the information, representation and other matters of fact committed in writing to the Authority by the Contractor in connection with or arising out of its final tender are true and complete in all material respects in the context of the Project;
- 5.1.8 the Contractor Warranted Data is true and accurate in all respects;
- 5.1.9 the Contractor has not, other than in connection with the Project, traded at any time since its incorporation as a company pursuant to the Companies Act 2006 (as amended);
- 5.1.10 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under any Project Document;

- 5.1.11 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under any Project Document;
- 5.1.12 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 5.1.13 each of the Project Documents is or, when executed, will be in full force and effect and constitutes or, when executed, will constitute the valid, binding and enforceable obligations of the parties thereto;
- 5.1.14 the copies of the Project Documents which the Contractor has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents,

and the Authority relies upon such warranties and representations.

5.2 Contractor Undertakings

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

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

- 5.2.6 it shall not without the written consent of the Authority (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by the Project Documents and/or Financing Agreements;
- 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; and
- 5.2.8 the Contractor shall inform the Authority if it becomes aware of any proposed Change of Ownership prior to its occurrence or, if it does not have prior information, as soon as reasonably practicable (and in any event within 10 days) of any Change of Ownership occurring and shall provide, with this information, details of the new ownership structure (legal and beneficial) and of the purchase price paid.
- 5.3 The Contractor undertakes to the Authority that it will throughout the duration of this Agreement use all reasonable endeavours to have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Contractor from bribing any person with the intention of obtaining or retaining business for the Contractor or with the intention of obtaining or retaining an advantage in the conduct of business for the Contractor.

5.4 **Status of Warranties**

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

6 **Authority Warranties**

6.1 **No Warranty by Authority**

Subject to clause 6.3 (Fraudulent Statements) and clause 8.10 (Authority Warranty) the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

6.2 **No Liability to Contractor**

Subject to clause 8.10 (Authority Warranty), neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

- 6.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or
- 6.2.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project.

6.3 **Fraudulent Statements**

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

6.4 **NOT USED**

6.5 **NOT USED**

6.6 **Contractor's Due Diligence**

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

6.6.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement; and

6.6.2 gathered all information necessary to perform its obligations under this Agreement and other obligations assumed, including:

- (a) information as to the nature, location and condition of the land (including hydrological, geological, geotechnical, ecological, environmental, climatic and sub-surface conditions);
- (b) information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures; and
- (c) information relating to Contamination of the Sites;
- (d) means of access to and through the Sites, the possibility of interference by any person with such access and the times and methods of working necessary to prevent any nuisance whether public or private to any third party; and
- (e) all necessary information as to risks, contingencies and all other circumstances necessary to perform its obligations under this Agreement and other obligations assumed.

6.7 **No Relief**

Subject to clause 6.3 (Fraudulent Statements) and clause 8.10 (Authority Warranty), the Contractor shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

7 **Co-operation**

7.1 **Authority Obligations**

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

7.2 **Co-Operation**

Each party agrees to co-operate, at its own expense (but without being compelled to incur material expenditure), with the other party 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 Access during Construction

From the Commencement Date in respect of the Sites until the date when the Leases are completed in accordance with this clause 8 (Nature of Land Interests) (or if earlier the Termination Date), the Authority will afford the Ancillary Rights to the Contractor and to every Contractor Related Party for the purpose of carrying out the Works.

8.2 Grant of Leases

Within fifteen (15) Business Days of the date of issue of a Certificate of Substantial Completion for a Phase the Authority shall grant to the Contractor, and the Contractor shall accept, the Lease for the Site relevant to that Phase in accordance (including as to timing) with this clause 8 (Nature of Land Interests).

8.3 Exclusion of Security

In respect of each Site the Contractor hereby confirms that before it became contractually bound to enter into the tenancy created by any Lease pursuant to this Agreement:

8.3.1 the Authority served on the Contractor a notice dated 16 day of December 2014 in relation to the tenancy created by the Lease (**Lease Notice**) in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (**Order**);

8.3.2 the Contractor, or a person duly authorised by the Contractor, in relation to the Lease Notice made a statutory declaration (**Lease Declaration**) dated 17 day of December 2014 in a form complying with the requirements of Schedule 2 of the Order;

8.3.3 where the Lease Declaration was made by a person other than the Contractor, the declarant was duly authorised by the Contractor to make the Lease Declaration on the Contractor's behalf; and

8.3.4 the Authority and Contractor agreed to exclude the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by the Lease.

8.4 Grant of Leases

The grant of the Leases shall take place at the offices of Addleshaw Goddard LLP in Leeds or such other place as may be notified in writing by the Authority to the Contractor. The term of the Leases shall commence on the date of issue of the Certificate of Substantial Completion for the Phase.

8.5 Delivery of Engrossments

Within eight (8) Business Days after the date of issue of the Certificate of Substantial Completion for a Phase, the Authority's Representative shall deliver engrossments of the counterpart Lease for the Site relevant to that Phase to the Contractor. The Contractor shall execute and deliver the counterpart Lease as a deed to the Authority's Representative within

a further five (5) Business Days of receipt. The Authority shall then execute the original Lease as a deed within a further two (2) Business Days and following completion in accordance with clause 8.2 (Grant of Leases) send the original Lease to the Contractor.

8.6 Conditions of Sale

8.6.1 Part 1 of the Standard Commercial Property Conditions (Second Edition) (**Part 1 Conditions**) are incorporated in this Agreement in so far as they

- (a) are applicable to the grant of a lease;
- (b) are not inconsistent with the other clauses in this Agreement; and
- (c) have not been modified or excluded by any of the other clauses in this Agreement,

and so that any reference to **buyer** shall be amended to **tenant** and any reference to **seller** shall be amended to **landlord** and any reference to **property** shall be amended to **Site**.

8.6.2 Part 2 of the Standard Commercial Property Conditions (Second Edition) are not incorporated in this Agreement.

8.6.3 The following Part 1 Conditions do not apply to this Agreement:

- (a) Condition 2.2;
- (b) Conditions 6.1, 6.2, 6.4.2 and 6.6.2;
- (c) Conditions 7.1.1, 7.1.2, 7.1.3 and 7.1.4(b);
- (d) Condition 9.3.3.

8.6.4 The Authority will give the Contractor vacant possession of the relevant Site on completion of the grant of the relevant Lease.

8.6.5 The Authority will grant the Leases with such title guarantee and with such modifications (if any) as are set out in the Leases.

8.6.6 The Contractor acknowledges that the Authority has deduced good title to the Sites before the date of this Agreement and

- (a) that the Sites are sold subject to and with the benefit of the matters contained or referred to in the Leases;
- (b) agrees to accept the Leases with knowledge and notice of the matters referred to in this clause 8 and in Standard Commercial Property Condition 3.1.2 and that it may not raise any requisitions on them, except in respect of matters arising from pre-completion searches in the period between the Commencement Date and the date of completion in accordance with clause 8.2 (Grant of Leases).

8.6.7 At any time prior to actual completion of a Lease the Authority may make such additions and modifications to the form of any Lease or the plan or plans to be

annexed to it as the Authority may reasonably require in order to describe the premises to be demised as constructed and/or the rights to be granted or reserved.

8.6.8 No provisions of this Agreement shall merge on the completion of the grant of any of the Leases.

8.7 Registration

The Contractor shall apply for, and procure, registration of each Lease at the Land Registry as soon as reasonably practicable after each relevant Lease has been completed. The Authority shall if requested by and at the cost of the Contractor use all reasonable endeavours to assist the Contractor in responding to any proper requisitions raised by the Land Registry of such documents that are in the Authority's possession relating to the freehold reversion as the Land Registry may request.

8.8 Grant of Tenancy Agreements

Pending the grant of a Lease for any particular Site, in accordance with the terms of the Allocation Protocol the Contractor may grant to a Tenant a Tenancy Agreement of any Apartment at a Site notwithstanding that the Lease has not been granted, but no agency is hereby created between the Authority and the Contractor and any Tenancy Agreement so granted is not granted by or on behalf of the Authority.

8.9 Compliance with Disclosed Title Matters

The Contractor shall without prejudice to clause 8.10 (Authority Warranty) procure that:

8.9.1 the carrying out of the Works and the provision of the Services at each 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 Title Matters relating to that Site;

8.9.2 in carrying out the Works and providing the Services at each 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 Site or any part of it (save in accordance with the terms of this Agreement or as permitted by a Lease); and

8.9.3 the Authority is indemnified in full from and against all Losses suffered or incurred by the Authority as a result of or in connection with any breach of this clause 8.9 (Compliance with Disclosed Title Matters).

8.10 Authority Warranty

The Authority warrants to the Contractor that the Replies to Enquiries have been prepared after due and careful enquiry and are reasonably believed to be true, accurate and complete as at the date of this Agreement, provided that no inaccuracies or omissions in such information shall be capable of giving rise to an Authority Default.

8.11 Title Compensation Events

The occurrence of a Title Compensation Event shall to the extent that the same has an adverse impact on the Works or Services:

- 8.11.1 prior to the relevant Services Commencement Date, constitute a Compensation Event subject to and in accordance with Clause 16 (Extension of Time);
- 8.11.2 after the relevant Services Commencement Date, be deemed to be a Relief Event and an Excusing Cause; and
- 8.11.3 be an Authority Change where any change to the Works and/or the Services and/or the Sites is required or instructed by the Authority as a direct consequence of the Title Compensation Event,

8A **Grant of Underlease**

8A.1 Within ten (10) Business Days of the date of issue of a Certificate of Availability for the Hawthorn Avenue Site the Contractor shall procure that the Landlord shall grant to the Authority, and the Authority shall accept, the Underlease for the Short Stay Apartment Area in accordance with this clause 8A (Grant of Underlease).

8A.2 The grant of the Underlease shall take place at the offices of Addleshaw Goddard LLP in Leeds or such other place as may be notified in writing by the Authority to the Contractor and/or the Landlord. The term of the Underlease shall commence on the date of issue of the Certificate of Availability for the Hawthorn Avenue Site.

8A.3 Within eight (8) Business Days after the date of issue of the Certificate of Availability for the Hawthorn Avenue Site, the Contractor's Representative shall deliver engrossments of the counterpart Underlease for the Short Stay Apartment Area to the Authority. The Authority shall execute and deliver the counterpart Underlease as a deed to the Contractor's Representative within a further five (5) Business Days of receipt. The Contractor shall procure that the Landlord shall then execute the original Underlease as a deed within a further two (2) Business Days and following completion in accordance with clause 8A.1 (Grant of Underlease) send the original Underlease to the Authority.

8A.4 The following provisions shall apply to the grant of the Underlease:

8A.4.1 Part 1 of the Standard Commercial Property Conditions (Second Edition) (**Part 1 Conditions**) are incorporated in this Agreement in so far as they

- (a) are applicable to the grant of the Underlease;
- (b) are not inconsistent with the other clauses in this Agreement; and
- (c) have not been modified or excluded by any of the other clauses in this Agreement,

and so that any reference to **buyer** shall be amended to **tenant** and any reference to **seller** shall be amended to **landlord** and any reference to **property** shall be amended to **Short Stay Apartment Area**.

8A.4.2 Part 2 of the Standard Commercial Property Conditions (Second Edition) are not incorporated in this Agreement.

8A.4.3 The following Part 1 Conditions do not apply to this Agreement:

- (a) Condition 2.2;
- (b) Conditions 6.1, 6.2, 6.4.2 and 6.6.2;

(c) Conditions 7.1.1, 7.1.2, 7.1.3 and 7.1.4(b);

(d) Condition 9.3.3.

8A.4.4 The Contractor shall procure that the Landlord will give the Authority vacant possession of the Short Stay Apartment Area on completion of the grant of the Underlease.

8A.4.5 The Contractor shall procure that the Landlord will grant the Underlease with such title guarantee and with such modifications (if any) as are set out in the Underlease.

8A.4.6 The Authority acknowledges that the Contractor has deduced good title to the Short Stay Apartment Area before the date of this Agreement and

(a) that the Short Stay Apartment Area is sold subject to and with the benefit of the matters contained or referred to in the Underlease;

(b) agrees to accept the Underlease with knowledge and notice of the matters referred to in this clause 8A (Grant of Underlease) and in Standard Commercial Property Condition 3.1.2 and that it may not raise any requisitions on them.

8A.4.7 At any time prior to actual completion of the Underlease the Contractor and/or the Landlord may make such additions and modifications to the form of the Underlease or the plan or plans to be annexed to it as the Contractor and/or the Landlord may reasonably require in order to describe the premises to be demised as constructed and/or the rights to be granted or reserved.

8A.4.8 No provisions of this Agreement shall merge on the completion of the grant of the Underlease.

8A.5 The Authority shall apply for, and procure, registration of the Underlease at the Land Registry as soon as reasonably practicable after the Underlease has been completed. The Contractor shall (and shall procure that the Landlord shall) if requested by and at the cost of the Authority use all reasonable endeavours to assist the Authority in responding to any proper requisitions raised by the Land Registry of such documents that are in the Contractor's and/or the Landlord's possession relating to the Lease of the Hawthorn Avenue Site as the Land Registry may request.

PART 3 - WORKS ARRANGEMENTS

9 NOT USED

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 and completion, commissioning and testing of the Works so that:

10.1.1 each Phase shall achieve Services Commencement on or before the Planned Services Commencement Date for that Phase;

10.1.2 the Works fully comply with and meet all the requirements of:

- (a) this Agreement;
- (b) all applicable Legislation and Guidance;
- (c) the Output Specification;
- (d) all Consents;
- (e) all applicable Authority Policies;
- (f) the Contractor's Proposals; and
- (g) Good Industry Practice,

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

10.1.3 new materials only will be used in carrying out the Works (unless the Authority agrees otherwise in writing or the contrary is set out in the Output Specification) and all goods used or included in the 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 7 (Prohibited Materials) nor any products or materials not in conformity with relevant British or European Union Standards or codes of practice which at the time of use are widely known to building contractors or members of the relevant design profession within the European Union to be deleterious to health or safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used;

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;

- 10.1.6 the Works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the 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.

10.1A The Contractor shall procure that:

- 10.1A.1 the Building Contractor enters into the Hall Road Section 278 Agreement and the Hawthorn Avenue Section 278 Agreement (the **Section 278 Agreements**) as soon as reasonably practicable but in any event within three (3) months of the date of this Agreement;
- 10.1A.2 the Building Contractor undertakes the Works and performs its other duties pursuant to and in accordance with the Section 278 Agreements.

10.2 **Inconsistencies**

- 10.2.1 Where there is an inconsistency within the Works Delivery Plans the Contractor shall inform the Authority in writing of its proposed amendment to remove the inconsistency and the Contractor shall, subject to obtaining the written approval of the Authority in accordance with the Review Procedure to deal with such inconsistency, amend the 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 or Guidance, the Contractor shall amend the Works Delivery Plans to comply with such Legislation and any such amendment shall not be deemed to be an Authority Change and the Contractor shall not be entitled to any additional monies or adjustment of the Unitary Charge in respect of any loss incurred as a result of such inconsistency or its adjustment.

11 **Works Stipulations**

During the carrying out of the Works the Contractor shall and shall procure that the Building Contractor and its sub-contractors shall comply with the Works Procedures contained in Schedule 30 (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 Authority (such approval not to be unreasonably withheld or delayed), to act as the Contractor's Representative in connection with the carrying out of the Works, the provision of the Services and generally in connection with this Agreement. The name and address of the Contractor's Representative shall, at all times, be made known to the Authority by the Contractor as shall a telephone number on which the Contractor's Representative or his delegate can be contacted twenty four (24) hours a day.

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

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 Authority's Representative

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

12.5 Authority of Authority's Representative

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

12.6 Notices etc

12.6.1 Subject to clause 69 (Notices), any notice, information, instructions or public communication given to:

- (a) the Contractor's Representative shall be given in writing and shall be deemed to have been given to the Contractor; and
- (b) the Authority's Representative shall be given in writing and shall be deemed to have been given to the Authority.

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

13 Site Meetings

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

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 Authority may review the Reviewable Design Data in accordance with the Review Procedure and the provisions of this clause.

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

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

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.

14A Judicial Proceedings

14A.1 Either party shall notify the other forthwith upon becoming aware of any Judicial Proceedings.

14A.2.1 The Authority shall be entitled by notice in writing to the Contractor (the "**Suspension Notice**") to suspend the Works (or the relevant part thereof) and the Contractor will forthwith suspend the Works (or the relevant part thereof) upon receipt of the Suspension Notice at the Site which is the subject of Judicial Proceedings and such suspension shall subsist subject to clause 14A.4.1 until such time as i) such Judicial Proceedings are finally dismissed or withdrawn; or ii) provided that there is no subsisting Judicial Proceedings Action the Authority informs the Contractor that the Works (or the relevant part thereof) should be resumed (whichever is the earlier).

14A.2.2 The Contractor must suspend the Works (or the relevant part thereof) at the Site which is the subject of any Judicial Proceedings Action and forthwith give notice of such suspension in writing to the Authority (the "**Contractor Suspension Notice**") and such suspension shall subsist subject to clause 14A.4.2 until such time as i) such Judicial Proceedings Action is finally overturned; ii) this Agreement is varied by means of an Authority Change to the Works in accordance with clause 15 (changes to the Works) in order to permit the Contractor lawfully to resume the Works (or the relevant part thereof) and/or perform its obligations under this Agreement; or iii) the parties otherwise agree in writing that the Works (or the relevant part thereof) should be resumed (whichever is the earlier).

14A.3.1 Save for where the Contractor or a Contractor Related Party (and for the purposes of this clause 14A.3.1 only "Contractor or a Contractor Related Party" shall exclude an employee or agent of the Contractor or of a Contractor Related Party acting in a personal capacity) has brought or caused to be brought on its behalf Judicial Proceedings any suspension of the Works (or the relevant part thereof) pursuant to clause 14A.2.1 or 14A.2.2 shall be deemed to be a Compensation Event from the date of the Suspension Notice or Contractor Suspension Notice as appropriate and the provisions of clause 16 (Extensions of Time) shall apply (and for the purposes of the provisions of clause 16.1 (Notice) the Contractor is deemed to have become aware that there will be or is likely to be a delay in the commencement or completion of the Works on the date of receipt of the Suspension Notice or the date of Contractor Suspension Notice as appropriate).

14A.3.2 Where a Contractor Related Party (and for the purposes of this clause 14A.3.2 only "Contractor Related Party" shall exclude an employee or agent of the Contractor or a Contractor Related Party acting in a personal capacity) has brought or caused to be brought on the Contractor Related Party's behalf Judicial Proceedings any suspension of the Works (or relevant part thereof) pursuant to clause 14A.2.1 or 14A.2.2 shall be deemed to be a Relief Event from the date of the Suspension Notice or Contractor Suspension Notice as appropriate and the provisions of clause 51 (Relief Events) shall apply but solely for the purpose of entitling the Contractor to apply for relief from any rights of the Authority to terminate this Agreement for Contractor Default pursuant to limbs (i) (Abandonment), (j)(Commencement) and/or (k)(Longstop Date) of that definition.

14A.4 If by the date falling twelve (12) months after the date of the:

14A.4.1 Suspension Notice the Works (or the relevant part thereof) are still suspended pursuant to clause 14A.2.1 then, unless agreed otherwise in writing between the parties, this Agreement shall be deemed to be terminated by the Authority as at such date; or

14A.4.2 Contractor Suspension Notice the Works (or the relevant part thereof) are still suspended pursuant to clause 14A.2.2 then, unless agreed otherwise between the

parties, this Agreement shall be deemed to be terminated by the Authority as at such date,

and where either clause 14A.4.1 or clause 14A.4.2 applies notwithstanding that the Contractor or a Contractor Related Party has brought or caused to be brought on its behalf Judicial Proceedings compensation shall be paid by the Authority in accordance with the provisions of clause 42 (Compensation on Termination for Force Majeure).

14B Hall Road Footpath

14B.1 Each of the Parties acknowledge and agree that:

14B.1.1 the Footpath Stopping Up Application has been made in respect of the Footpath but that as at the date of this Agreement no Footpath Stopping Up Order has been made;

14B.1.2 it is expected by the Parties that the Footpath Stopping Up Order will be made on 9th January 2015;

14B.1.3 if an objection from a third party to the Footpath Stopping Up Application is made on or prior to 9th January 2015, the Footpath Stopping Order is likely to be delayed beyond 9th January 2015 to an uncertain date;

14B.1.4 if either:

14B.1.4.1 the Footpath Stopping Up Order has not been made by the Start on Site Date for the Hall Road Site; or

14B.1.4.2 a Footpath Challenge is made following the date of the Footpath Stopping Up Order,

risks arise in relation to the commencement or continuation of Works at the Hall Road Site which may mean that the Authority wishes to suspend such Works or the Contractor is required to suspend such Works until the relevant issue is resolved; and

14B.1.5 clauses 14.B.2 to 14.B.2.8 set out how the Parties have agreed to deal with the residual risks arising as referred to in this clause 14B.1.

14B.2 Suspension of Works

14B.2.1 Either Party shall notify the other forthwith upon becoming aware of:

14B.2.1.1 a matter arising that makes it likely that that the Footpath Stopping Up Order will not be made on or before the Start on Site Date for the Hall Road Site; or

14B.2.1.2 a Footpath Challenge.

14B.2.2 If either:

14.B.2.2.1 the Footpath Stopping Up Order has not been made by the Start on Site Date for the Hall Road Site; or

14.B.2.2.2 there is a Footpath Challenge,

at any time thereafter the Authority may serve notice in writing on the Contractor (the **Footpath Suspension Notice**) to suspend the Works at the Hall Road Site (or a relevant part

thereof) and the Contractor will forthwith suspend the Works (or the relevant part thereof) upon receipt of the Footpath Suspension Notice at the Hall Road Site and such suspension shall subsist (subject to clause 14B.2.7) until the Resolution Date. The Authority may serve a Footpath Suspension Notice on more than one occasion, and accordingly there may be more than one Resolution Date, depending upon the circumstances (for example, where an objection is received prior to the Start on Site Date at the Hall Road Site which is resolved, but where a subsequent Footpath Challenge is also made and this is also resolved).

14.B.2.3 The Contractor must suspend the Works (or the relevant part thereof) at the Hall Road Site to the extent that:

14.B.2.3.1 commencement or continuation of the same would be unlawful; or

14.B.2.3.2 there is a Footpath Action,

and in either case shall forthwith give notice of such suspension in writing to the Authority (the "**Contractor Footpath Suspension Notice**"), and such suspension shall subsist (subject to clause 14B.2.7) until such time as i) it would no longer be unlawful to commence or continue the Works or such Footpath Action is finally overturned (as applicable); ii) this Agreement is varied by means of an Authority Change to the Works in accordance with clause 14B.2.5 in order to permit the Contractor lawfully to commence or resume the Works (or the relevant part thereof) and/or perform its obligations under this Agreement; or iii) the Parties otherwise agree in writing that the Works (or the relevant part thereof) should be commenced or resumed (whichever is the earlier). The Contractor may serve a Contractor Footpath Suspension Notice on more than one occasion.

14.B.2.4 Save for where the Contractor or a Contractor Related Party (and for the purposes of this clause 14.B.2.4 only "Contractor or a Contractor Related Party" shall exclude an employee or agent of the Contractor or of a Contractor Related Party acting in a personal capacity) has brought or caused to be brought on its behalf any Footpath Challenge, subject to clause 14B.2.8, any suspension of the Works (or the relevant part thereof) pursuant to clause 14B.2.2 or 14B.2.3 shall be deemed to be a Compensation Event (**Footpath Compensation Event**) from the date of the Footpath Suspension Notice or the Contractor Footpath Suspension Notice (as applicable) until the earlier of:

14.B.2.4.1 in the case of a Footpath Suspension Notice, the Resolution Date;

14.B.2.4.2 in the case of a Contractor Footpath Suspension Notice, the date of resolution in accordance with clause 14B.2.3 above; and

14.B.2.4.3 in either case, the date upon which this Agreement terminates pursuant to clause 14B.2.7.

and the provisions of clause 16 (Extensions of Time) shall apply (and for the purposes of the provisions of clause 16.1 (Notice) the Contractor is deemed to have become aware that there will be or is likely to be a delay in the commencement or completion of the Works on the date of receipt of the Footpath Suspension Notice or the date of the Contractor Footpath Suspension Notice (as appropriate)), but provided that notwithstanding any other provisions of this Agreement the costs arising in respect of such suspension of the Works shall not all be borne by the Authority but shall instead be borne by the Parties in accordance with clause 14B.2.5.

14.B.2.5 The following provisions shall apply following a Footpath Suspension Notice or a Contractor Footpath Suspension Notice:

- 14.B.2.5.1 as soon as practicable following any suspension of the Works referred to above, the Authority and the Contractor shall meet to discuss how (i) an Authority Change to this Agreement could allow the Works at the Hall Road Site to commence or resume (the "**Footpath Change**") and (ii) an amount of at least [REDACTED] of capital costs could be saved by way of a separate Authority Change to the Authority's requirements within Section 3 (Works Requirements) of the Output Specification (the "**Footpath Savings Change**") (both Parties acting reasonably and without delay);
- 14.B.2.5.2 following the discussions referred to above where the Footpath Suspension Notice or Contractor Footpath Suspension Notice subsists, the Authority shall issue an Authority Change Notice in respect of the Footpath Change and the provisions of Schedule 25 (Change Protocol) shall apply, subject to clause 14B.2.5.3 and 14B.2.5.4 below:
- 14.B.2.5.3 where the Footpath Change has been agreed prior to the expiry of the period referred to in Clause 14B.2.7 (and provided that the Footpath Suspension Notice or Contractor Footpath Suspension Notice subsists) the Footpath Change shall be implemented and:
- 14.B.2.5.3.1 subject to clause 14B.2.5.5, the Footpath Savings Change shall also be made to this Agreement in accordance with the provisions of Schedule 25 (Change Protocol) (and where the cost of the Footpath Change is less than [REDACTED] the Authority shall determine the extent to which the Footpath Savings Change shall be made provided that the related savings are equal to or greater than the cost of the Footpath Change);
- 14.B.2.5.3.2 the relevant savings as a result of the Footpath Savings Change shall be applied towards the costs incurred by the Authority in relation to the Footpath Compensation Event and the cost of the Footpath Change;
- 14.B.2.5.4 If the costs incurred in relation to both the Footpath Compensation Event and (where applicable) the Footpath Change exceed an aggregate amount of f [REDACTED]:
- 14.B.2.5.4.1 the next [REDACTED] of costs shall be shared equally by the Authority and the Contractor on a pound for pound basis; and
- 14B.2.5.4.2 any costs arising in excess of such [REDACTED] shall be entirely for the account of the Authority;
- 14.B.2.5.5 the Authority may, in its sole discretion, choose not to implement the Footpath Savings Change (or any element thereof) provided that in such circumstances the Authority shall be wholly responsible for the cost of the Compensation Event and (if applicable) the Footpath Change up to an amount reflecting the amount of savings that would have been made as a result of the Footpath Savings Change (or relevant element thereof) but for the Authority's election under this clause 14B.2.5.5; and

14B.2.5.6 the Contractor shall ensure that any amounts due from it under clause 14B.2.5.4 above are met and discharged promptly;

14B.2.6 Where a Contractor Related Party (and for the purposes of this clause 14B.2.6 only "Contractor Related Party" shall exclude an employee or agent of the Contractor or a Contractor Related Party acting in a personal capacity) has brought or caused to be brought on the Contractor Related Party's behalf a Footpath Challenge any suspension of the Works (or relevant part thereof) pursuant to clause 14B.2.2 or 14B.2.3 shall be deemed to be a Relief Event from the date of the Footpath Suspension Notice or Contractor Footpath Suspension Notice as appropriate and the provisions of clause 51 (Relief Events) shall apply but solely for the purpose of entitling the Contractor to apply for relief from any rights of the Authority to terminate this Agreement for Contractor Default pursuant to limbs (i) (Abandonment), (j) (Commencement) and/or (k)(Longstop Date) of that definition.

14B.2.7 If by the date falling twelve (12) months after the date of the first Footpath Suspension Notice or first Contractor Footpath Suspension Notice (as applicable) the Works (or the relevant part thereof) are still suspended pursuant to clause 14B.2.2 or 14B.2.3 then, unless agreed otherwise in writing between the Parties, this Agreement shall be deemed to be terminated by the Authority as at such date and notwithstanding that the Contractor or a Contractor Related Party has brought or caused to be brought on its behalf a Footpath Challenge compensation shall be paid by the Authority in accordance with the provisions of clause 42 (Compensation on Termination for Force Majeure).

14.B.2.8 The Authority shall not be liable for any construction costs that have been incurred or which arise in respect of the period prior to the Start on Site Date at the Hall Road Site.

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 an Authority Change or a variation to the Works Delivery Plan which is implemented at the request of agreement of the Authority) which would delay any Planned Services Commencement Date or would lead to an increase in the Unitary Charge.

15.4 No Implementation without Consent

The Contractor shall not implement any variation to a Works Delivery Plan (other than minor or immaterial changes) or the Construction Programme until the Authority consents or is deemed to have consented to the variation in accordance with the Review Procedure,

provided that in the case of a Change in Law the Authority shall be deemed to have given such consent. Once consented to, a proposed variation will form part of the Contractor's Proposals.

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 or a Planned Services Commencement Date (or if the delay occurs after a Planned Services Commencement Date, the relevant Long Stop Date) may not be achieved, the Contractor shall as soon as reasonably practicable and in any event within twenty (20) Business Days of becoming aware of the likely delay give notice to the Authority to that effect specifying:

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 Start on Site Dates, the Planned Services Commencement Dates and/or the Long Stop Dates (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 Authority 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 Authority.

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 or a Planned Services Commencement Date or any relevant Long Stop Date, is notified to the Authority 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 in Services Commencement Date 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 an Authority 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 in Services Commencement Date due to a Compensation Event

If, on or before a Services Commencement Date, as a direct result of the occurrence of a Compensation Event:

- 16.5.1 the Contractor is unable to achieve the Start on Site Date for the Phase, or the Services Commencement for the Phase on or before the Planned Services Commencement Date for that Phase or following the Planned Services Commencement Date, the relevant Long Stop Date; and/or
- 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 (including loss of Rents and/or Service Charges payable to the Landlord) but excluding any lost revenue or costs relating to a delay in completion of the Works resulting from the Compensation Event referred to in limb (d) of that definition),

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) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Agreement and/or the Contractor to incur costs or lose revenue (including loss of Rents and/or Service Charges payable to the Landlord), give to the Authority a notice of its claim for an extension of time to the relevant Start on Site Date, Planned Services Commencement Date and/or the relevant Long Stop Date, payment of compensation and/or relief from its obligations under this Agreement;
- 16.6.2 within ten (10) Business Days of receipt by the Authority 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 and/or any Estimated Change in Project Costs and/or loss of revenue (including loss of Rents and/or Service Charges payable to the Landlord) claimed; and
- 16.6.3 demonstrate to the reasonable satisfaction of the Authority that:
 - (a) the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or loss of revenue (including loss of Rents and/or Service Charges payable to the Landlord) and/or any delay in the achievement of the Start on Site Date or the Planned Services Commencement Date and/or breach of the Contractor's obligations under this Agreement; or following the Planned Services Commencement Date, delay in achieving Services Commencement before the relevant Long Stop Date; and
 - (b) the Estimated Change in Project Costs and/or loss of revenue (including loss of Rents and Service Charges payable to the Landlord), 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):

16.7.1 in the case of a delay, the relevant Start on Site Date or Planned Services Commencement Date or, following the relevant Planned Services Commencement Date, the relevant Long Stop Date, shall be postponed by such time 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 (including loss of Rents and/or Service Charges payable to the Landlord) but excluding any lost revenue or costs relating to a delay in completion of the Works resulting from the Compensation Event referred to in limb (d) of that definition):

- (a) in relation to a Phase, on or before the Planned Services Commencement Date for that Phase; or
- (b) as a result of Capital Expenditure being incurred by the Contractor at any time,

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

16.7.3 Save in the respect of the Compensation Event referred to in limb (d) of that definition, in the case of a payment of compensation for the Estimated Change in Project Costs and/or without double counting, loss of revenue (including loss of Rents and Service Charges payable to the Landlord) 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 and/or, without double counting, loss of revenue being incurred by the Contractor after a Planned Services Commencement Date, the Authority 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 65 (Financial Adjustments); and/or

16.7.4 the Authority 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 Authority 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 in Services Commencement Date due to a Compensation Event) to 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 65 (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) and clause 17.2 (Compliance with CDM Regulations), Client, Health and Safety File and CDM Co-ordinator have the same meanings as in the CDM Regulations;

17.1.2 the Contractor has elected that for the purposes of the CDM Regulations the Contractor shall be treated as the only Client in respect of the Works pursuant to Regulation 8 of the CDM Regulations and the Authority has agreed to such election;

17.1.3 the Contractor shall ensure that the Building Contractor is aware of such election and warrants to the Authority that it is competent to perform the duties imposed on a Client by the CDM Regulations and shall not at any time terminate, withdraw or derogate in any manner from its declaration or its acceptance of its responsibilities as Client;

17.1.4 the Contractor shall within twenty (20) Business Days of the issue of a Certificate of Availability for each Phase deliver to the Authority the Health and Safety File for each Apartment Area which is the subject of that Certificate of Availability;

17.1.5 notwithstanding the election made under clause 17.1.2, the Authority shall observe and continue to observe the duties that are, pursuant to Regulation 8 of the CDM Regulations, to remain with the Authority, notably those duties under Regulations (5)(1)(b), 10(1), 15 and 17(1).

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 Sites

18.1 Access

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

18.2 Site Matters

18.2.1 Subject to clauses 18.2.3 and 18.2.4, 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:

- (a) carried out a Ground Physical and Geophysical Investigation and to have inspected and examined the Sites and their surroundings and (where applicable) any existing structures or works on, over or under the Sites;
- (b) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Sites, the load bearing and other relevant properties of the Sites, the risk of injury or damage to property affecting the 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;
- (c) satisfied itself as to the absence of Contamination;
- (d) satisfied itself as to the adequacy of the means and rights of access to and through the Sites and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Sites);
- (e) satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority) with access to or use of, or rights in respect of, the Sites with particular regard to the owners of any land adjacent to the Sites; and
- (f) 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 Subject to clauses 18.2.3 and 18.2.4, the Contractor accepts full responsibility for all matters referred to in clause 18.2.1 (Site Matters) and the Contractor shall:
- (a) not be entitled to make any claim against the Authority 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 Sites was given to it by any person, whether or not an Authority Related Party; and
 - (b) be responsible for, and hold the Authority harmless from, cleaning up and otherwise dealing with any Contamination at the 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 Authority or the Contractor).
- 18.2.3 The Authority shall be responsible for any unforeseen Site Conditions and/or Contamination which is located on any parts of the Hall Road Site under Existing Buildings as at Financial Close which is not revealed from the trial pits and boreholes nearest located to the relevant Existing Buildings and other data contained in the Ground Physical and Geophysical Investigation of the Hall Road Site as referred to in clause 18.2.1(a) as being reasonably expected to be undertaken by an experienced contractor and the Authority Ground Investigation as a reasonable and prudent contractor would interpret such data in the context of the Project.
- 18.2.4 Where pursuant to clause 18.2.3 the Authority is responsible for any unforeseen Site Conditions and/or Contamination referred to then the following provisions shall apply:
- (a) the matters shall be deemed to be a Compensation Event for the purposes of this Agreement and any work which is required or instructed to be done in consequence of it shall be deemed to be an Authority Change; and
 - (b) where any such matter is Contamination the Authority shall further hold the Contractor harmless from cleaning up and otherwise dealing with such Contamination and shall indemnify the Contractor in respect of all Direct Losses incurred by the Contractor resulting from such Contamination,
- and the Contractor shall in carrying out any works referred to in clauses 18.2.4(a) and 18.2.4(b) do so in accordance with and so that it shall at all times comply with its obligations under this Agreement including (without limitation) complying with Good Industry Practice, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).
- 18.2.5 The Authority shall, but only to the extent that the Contractor is able to demonstrate to the Authority 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 Authority'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 Authority at the Contractor's own expense in which case the provisions of clauses 56.7

(Conduct of Claims) and 57.8 (Costs of Claims) shall apply as if the Contractor were the Indemnifying Party and the Authority were the Indemnified Party, except that the Contractor shall not pay or settle such claims without the prior consent of the Authority,

subject to the Contractor indemnifying the Authority in respect of all costs properly and reasonably incurred by the Authority in respect of such action. Where the Authority takes action under clause 18.2.5(a) or 18.2.5(b) (or where it is otherwise obliged to take action against third parties in respect of such losses), the Authority shall be liable to the Contractor for all losses suffered or incurred by the Contractor as a result of its obligations under this clause 18.2.5, provided that the Contractor's entitlement in respect of any matter to which this clause 18.2.5 applies shall be limited to the amount recovered by or in the name of the Authority from the relevant third party in respect of the losses referred to in this clause 18.2.5.

18.3 **NOT USED**

18.4 **Consents and Planning Approval**

The Contractor shall:

- 18.4.1 subject to clause 18.4.2, at its own expense obtain and maintain all Consents which may be required for the performance of the Project;
- 18.4.2 at its own expense use all reasonable endeavours to assist the Authority to obtain all Consents that, as a matter of law, the Contractor is not eligible to obtain;
- 18.4.3 be responsible for implementing each Consent (which it is required to obtain pursuant to clause 18.4.1 above) within the period of its validity in accordance with its terms;
- 18.4.4 supply free of charge to the Authority's Representative a copy of any application for a Consent (with a copy of all accompanying drawings and other documents) and a copy of any Consent obtained;
- 18.4.5 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; and
- 18.4.6 the Contractor shall not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not) without the prior consent of the Authority under this Agreement (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Consent (whether obtained before or after the date of this Agreement) or of any condition attached to it but, subject to the compliance by the Contractor with its obligations under this 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 **No Warranty**

Subject to clause 18.7 (Defects), the Contractor shall take the Sites in their state and condition in all respects as at the date of this Agreement. Nothing in this Agreement or

otherwise shall constitute or imply a warranty by or on the part of the Authority as to the fitness and suitability of the Sites or any part thereof for the Works or for any other purpose.

18.6 Third Party Rights

Subject to clause 8.10 (Authority Warranty), the Contractor shall observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Sites, and the Contractor shall ensure that the Works and/or Services 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.

18.7 Defects

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

18.7.1 defective design;

18.7.2 defective workmanship or defective materials, plant or machinery used in such construction having regard to Good Industry Practice and to appropriate British standards and codes of practice current at the date of construction of the Apartment Area;

18.7.3 defective installation of anything in or on the Apartment Areas;

18.7.4 defective preparation of the site on which the Apartment Area is constructed; or

18.7.5 defects brought about by adverse ground conditions or by reason of subsidence, water table change or any other change to ground conditions.

18.8 NOT USED

18.9 Fossils and Antiquities

18.9.1 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 Sites are or shall become, upon discovery, the absolute property of the Authority.

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

- (a) immediately inform the Authority's Representative of such discovery;
- (b) 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
- (c) take all necessary steps to preserve the object in the same position and condition in which it was found.

18.9.3 The Authority shall procure that the Authority's Representative promptly, and in any event within five (5) Business Days, issues an instruction to the Contractor specifying what action the Authority's Representative requires to be taken in relation to such

discovery provided that if no instruction is forthcoming within such five (5) Business Days the Contractor may continue to carry out the Works.

18.9.4 The Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in clause 18.9.3 (Fossils and Antiquities) (except and to the extent that such instruction constitutes an Authority Change pursuant to clause 18.9.6 (Fossils and Antiquities), in which case the provisions of the Change Protocol shall apply) at its own cost.

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

18.9.6 If any instruction referred to in this clause 18.9 (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 Apartment Areas) which are not works which would be necessary for the purpose of compliance with Legislation or any Consents, such works and/or suspension shall be deemed to be an Authority Change and the provisions of the Change Protocol shall apply.

18.9.7 The Authority shall act promptly and diligently in dealing with its obligations in this clause 18 (The Sites) in relation to any find so as to mitigate any effect on the Contractor, the Works and/or the Services

19 Monitoring and Inspection

19.1 Right of Inspection

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

- (a) Subject to clause 19.1.1(b) (Right to Open Up), the Authority's Representative shall have the right at any time prior to the Planned Services Commencement Date for a Phase to request the Contractor to open up and inspect any part or parts of the Works at that Phase where the Authority's Representative reasonably believes that such part or parts of the Works is or are defective and the Contractor shall comply with such request.
- (b) Prior to exercising his right pursuant to clause 19.1.1(a) (Right to Open Up), above, the Authority's Representative shall notify the Contractor of his intention to exercise such right, setting out detailed reasons.

- (c) If, following the exercise by the Authority's Representative of his right pursuant to clause 19.1.1(a) (Right to Open Up), 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.
- (d) If, following the exercise by the Authority's Representative of his right pursuant to clause 19.1.1(a) (Right to Open Up), the inspection shows that the relevant part or parts of the Works is or are defective, the Contractor shall rectify and make good such defect(s) and any consequence of such rectification and/or making good defect(s) shall be carried out by the Contractor at no cost to the Authority and the Contractor shall not be entitled to any extension of time in relation to such rectification and making good of the Works.
- (e) If, following the exercise by the Authority's Representative of his right pursuant to clause 19.1.1(a) (Right to Open Up), the Authority's Representative is of the opinion that the inspection shows that the relevant part or parts of the Works is or are defective and the Contractor does not agree with such opinion, the matter shall be determined in accordance with clause 60 (Dispute Resolution).
- (f) Without prejudice to the rights of the Authority's Representative pursuant to this clause 19.1.1 (Right to Open Up), 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 Authority or a representative or advisor of the Authority may at all times enter upon any property used by the Contractor as training or workshop facilities and places where work is being prepared or materials are being obtained for the Project.

19.3 Contractor's Reasonable Assistance

The Contractor shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of clauses 19.1 (Right of Inspection) and 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 Authority reimbursing the Contractor for any reasonable costs or expenses incurred as a result of the action taken by the Authority under clauses 19.1 (Right of Inspection) and 19.2 (Inspection of Facilities).

19.4 Health and Safety Requirements

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

19.5 Supply of Information

The Contractor shall supply to the Authority and any representative or adviser of the Authority visiting any of the Sites pursuant to 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:

- (a) subject to complying with all relevant safety procedures, which shall include any relevant health and safety plans for the construction of the Works, the Contractor's site rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Representative from time to time, the Authority's Representative and such other authorised personnel as notified by the Authority to the Contractor shall on reasonable prior notice appropriate to the circumstances have unrestricted access to all parts of each Site at all reasonable times during normal working hours necessary to:
 - (i) view the state and progress of Works at each Site and to ascertain whether they are being executed in accordance with this Agreement; and
 - (ii) 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;
- (b) the Authority's Representative shall have such rights of access to the Site in an emergency as it (acting reasonably) considers suitable in the circumstances; and
- (c) monthly progress meetings and site meetings are held and that the Authority's Representative shall have the right to attend such monthly progress meetings and site meetings and to attend as observer such other meetings as the Authority's Representative may reasonably request.

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

19.6.3 Supply of Information

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

19.7 Damages

If the Authority or an Authority Related Party causes material damage to any of the Sites in exercising any right under this clause 19 (Monitoring and Inspection), then the Authority 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 Authority and the Contractor shall on or before the date of this Agreement, appoint the Independent Certifier for the purposes of this Agreement upon the terms of the Independent Certifier's Deed of Appointment.

20.1.2 The Independent Certifier's Deed of Appointment shall specify the duties of the Independent Certifier owed to the Authority and the Contractor.

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

20.1.4 The Authority and the Contractor shall comply with their respective obligations under the Independent Certifier's Deed of Appointment.

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

- (a) 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;
- (b) release, waive, settle, compromise or otherwise prejudice or vary any rights or claims which the other may from time to time have against the Independent Certifier; or
- (c) vary or agree or purport to vary the terms of the Independent Certifier's Deed of Appointment or the IC Services performed or to be performed by the Independent Certifier.

20.1.6 The Authority and the Contractor agree to co-operate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier's Deed of Appointment. All instructions and representations issued or made by either of the Authority or the Contractor to the Independent Certifier shall be simultaneously copied by that party to the other and both parties shall be entitled to attend all inspections undertaken by or meetings involving the Independent Certifier.

20.1.7 In the event of the Independent Certifier's appointment being terminated otherwise than following full performance, the Authority and the Contractor shall liaise and

co-operate with each other in order to appoint, a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement consultant shall be as agreed by the Authority and the Contractor and the terms of his appointment shall, unless otherwise agreed, be as set out in the Independent Certifier's Deed of Appointment.

20.1.8 In the event that the Authority and the Contractor fail to agree the identity and/or terms of a replacement Independent Certifier in accordance with clause 20.1.7 (Independent Certifier) within twenty (20) Business Days of the original Independent Certifier's appointment being terminated, then either the Authority or the Contractor may refer the matter for determination under the Dispute Resolution Procedure.

20.2 **Issue of Certificate of Substantial Completion**

The Authority and the Contractor shall procure that where the Independent Certifier considers that Substantial Completion has been achieved in respect of a Phase, the Independent Certifier will issue a Certificate of Substantial Completion with copies to the Authority and the Contractor. Following receipt by the Parties of the Certificate of Substantial Completion, the Contractor shall (without prejudice to its obligations within clause 16.1 (Notice)), notify the Authority of the date that the Contractor reasonably anticipates that the relevant Phase will have met the Availability Certification Requirements.

20.3 **Effect of Issue of Certificate of Substantial Completion**

The issue of a Certificate of Substantial Completion shall, in the absence of manifest error, bad faith or fraud, indicate only that the Independent Certifier is of the opinion that the relevant Phase has achieved Substantial Completion and, without prejudice to the right of either party to make a claim under the Independent Certifier's Deed of Appointment, shall in no way lessen or affect the obligations of the Contractor under this Agreement in relation to that Phase or any other part of the Works or the Services, and the Contractor shall following the date of issue of the Certificate of Substantial Completion carry out and complete the Works to meet the Availability Standards.

20.4 **Issue of Certificate of Availability**

Subject to clause 20.5 (Restriction on Issue of Certificate of Availability), the Authority and the Contractor shall procure that where the Independent Certifier considers that the relevant Availability Certification Requirements have been satisfied and that all outstanding Works detailed in the Snagging List can be carried out within twenty (20) Business Days of the issue of the Certificate of Availability in respect of a Phase the Independent Certifier will issue a Certificate of Availability with copies to the Authority and the Contractor.

20.5 **Restriction on Issue of Certificate of Availability**

The Authority and the Contractor agree that (and shall procure that) the Independent Certifier shall only be entitled to issue a Certificate of Availability for a Phase (**Proposed Phase**) in accordance with clause 20.4 (Issue of Certificate of Availability), other than the first Phase, if a period of sixty (60) Business Days, or such lesser period as the Authority may agree, has expired between the date of issue of the most recently issued Certificate of Availability for a previous Phase and the proposed date of issue of the Certificate of Availability for the Proposed Phase, provided always that the Authority's agreement pursuant to this Clause 20.5 shall be at its sole discretion save where such agreement would result in any Certificate of Availability in respect of a Phase being issued prior to the relevant Planned Services

Commencement Date for that Phase, in which case the Authority's agreement shall be subject to the consent of the Contractor.

20.5A The Authority and the Contractor agree that (and shall procure that) the Independent Certifier shall not, without the prior agreement of both Parties, be entitled to issue a Certificate of Availability for a Phase in accordance of clause 20.4 (Issue of Certificate of Availability) on a date which is more than eight (8) weeks prior to the relevant Planned Services Commencement Date.

20.6 **Effect of Certificate of Availability**

20.6.1 The issue of a Certificate of Availability by the Independent Certifier shall indicate only that the relevant Works satisfy the criteria for the issue of a Certificate of Availability as set out in the Independent Certifier's Deed of Appointment.

20.6.2 The issue of a Certificate of Availability shall in no way lessen or affect the obligations of the Contractor under this Agreement to provide the Services and shall not relieve the Contractor from Deductions in accordance with Schedule 4 (Payment Mechanism).

20.6.3 As between the Authority and the Contractor the Certificate of Availability shall in the absence of manifest error, bad faith or fraud, be conclusive as to whether the relevant Works have been completed in accordance with clause 20.4 (Issue of Certificate of Availability) and in respect of a Phase, that such Phase has reached the relevant Availability Standard, at the date of such Certificate of Availability.

20.6.4 A Certificate of Availability cannot be revoked for any reason (save for manifest error, bad faith or fraud) after it has been issued.

20.7 **Snagging Items**

In the event that a Certificate of Availability for a Phase is expected to be subject to Snagging Items:

20.7.1 the Independent Certifier shall within five (5) Business Days of the issue of the relevant Certificate of Availability issue to the Contractor and the Authority a list of the relevant snagging items for that Phase (the Snagging List). Within five (5) Business Days of receipt from the Independent Certifier of the Snagging List the Contractor shall provide to the Authority and the Independent Certifier a reasonable programme for making good each Snagging Item set out in the Snagging List provided that such programme shall require that each Snagging Item shall be made good within one twenty (20) Business Days of the date of the agreement or determination of that programme or within such time as is reasonably practicable. The parties shall seek to agree such programme and in default of agreement shall refer the matter for determination under the Dispute Resolution Procedure. The programme agreed or determined in accordance with this clause 20.7.1 (Snagging Items) shall be known as the Snagging Programme; and

20.7.2 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 Authority shall be entitled to effect such repairs as may be necessary and recover the costs of doing so from the Contractor.

20.8 Site Clearance

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

21 Delays Damages

Without prejudice to the provisions of Part 6 (Termination) of this Agreement, the Authority shall not be entitled to claim liquidated or general damages in respect of a failure by the Contractor to achieve Services Commencement for any Phase by the corresponding Planned Services Commencement Date for that Phase.

PART 4 – THE SERVICES

22 Services Obligations

22.1 Commencement and Duration of the Services

22.1.1 The Contractor shall provide the Services to the Apartment Areas in each Phase from the relevant Services Commencement Date for that Phase for the duration of the Contract Period, so that the Services are provided in accordance with:

- (a) this Agreement;
- (b) all applicable Legislation and Guidance;
- (c) the Output Specification;
- (d) all applicable Authority Policies;
- (e) the Landlord's obligations contained or referred to in the Tenancy Agreement;
- (f) the tenant's obligations contained or referred to in the Leases;
- (g) the Services Delivery Plan(s); and
- (h) Good Industry Practice,

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

22.1.2 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.

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

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

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

22.5 **Authority Protocols**

22.5.1 The Contractor shall, in undertaking the Services, adopt and fully comply with the Access Protocol.

22.5.2 In the event that the Contractor becomes aware of an Access Refusal Event the Contractor shall immediately upon becoming so aware notify the Authority of this fact.

23 **Condition of the Apartment Areas**

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 Apartment Areas to achieve their full working life as set out in the Output Specification for the duration of the Contract Period;

23.1.3 the Apartment Areas are kept in good structural and decorative order (subject to fair wear and tear) in accordance with the Output Specification;

23.1.4 if the Authority exercises its Expiry Option, the Apartment Areas are handed back to the Authority in a condition complying with the Handback Standard.

23.2 **Surveys**

23.2.1 **NOT USED**

23.2.2 If the Authority 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 Apartment Areas to assess whether the Apartment Areas have been and are being maintained by the Contractor in accordance with its obligations under clause 23.1 (Maintenance). This right may not be exercised more often than once every two (2) years.

23.2.3 The Authority shall notify the Contractor in writing a minimum of ten (10) Business Days in advance of the date it wishes to carry out the survey. The Authority shall consider in good faith any reasonable request by the Contractor for the survey to be carried out on a different date if such request is made at least five Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially

prejudice the Contractor's ability to provide the Services or would prejudice the Tenants in their occupation or quiet enjoyment of the Apartment Areas.

23.2.4 When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor and the occupation and quiet enjoyment of the Tenants of the Apartment Areas. The cost of the survey shall, except where clause 23.2.5 (Surveys) applies, be borne by the Authority. The Contractor shall give the Authority (free of charge) any reasonable assistance required by the Authority during the carrying out of any survey.

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

- (a) notify the Contractor of the standard that the condition of the Apartment Areas should be in to comply with its obligations under clause 23.1 (Maintenance);
- (b) specify a reasonable period within which the Contractor must carry out any necessary rectification and/or maintenance work; and
- (c) be entitled, where the Contractor has not complied, or is not complying with its obligations in a material way, to be reimbursed by the Contractor for the cost of the survey and any administrative costs incurred by the Authority in relation to the survey.

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

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 the Cyclical Maintenance and Replacement Programme as a result of such annual review (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:

- (a) no later than 31st January in each Contract Year give the Authority a draft of the Planned Maintenance Programme for the next Contract Year which shall:
 - (i) include the commencement date, details and duration of Planned Maintenance;
 - (ii) be prepared on the basis that disturbance and Availability problems should be minimised;

- (iii) 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;
- (b) present each annual Planned Maintenance Programme for approval in accordance with the Review Procedure;
- (c) 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 Authority and the Contractor shall jointly consider the Contractor's proposals in the draft Planned Maintenance Programme in order to agree arrangements for Planned Maintenance to be carried out, so far as practicable, in a manner and at times which will allow the Contractor to deliver the Services and to agree the planned duration of such Planned Maintenance.

23.4 Service Chargeable Life Cycle Items

23.4.1 In the event that the Authority exercises the Expiry Option pursuant to Clause 46.1.2 (Assets), the Contractor shall transfer to the Authority or to another contractor as the Authority directs at no cost to the Authority any amounts standing to the credit of the Lifecycle Account to the extent that such amounts relate to the replacement of Service Chargeable Life Cycle Items within ten (10) Business Days of the Expiry Date.

23.4.2 At the end of each Contract Year the Contractor will notify the Authority of any amounts standing to the credit of the Lifecycle Account which relate to the replacement of the Service Chargeable Life Cycle Items.

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 Authority of all such materials being used or stored at the Sites and shall comply with any other reasonable requirement of the Authority 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 Authority may instruct the Contractor to use its best endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Authority to ensure that the Emergency is dealt with and normal operation of the relevant Apartment Area resumes as soon as is reasonably practicable provided that the Contractor shall not be obliged to provide any service which it is neither qualified nor competent to provide.

25.2 Costs

The properly incurred costs of the Contractor of any additional or alternative services provided to the Authority under clause 25.1 (Additional or Alternative Services) or any revenue lost by the Contractor (including loss of Rents and Service Charges payable to the Landlord) shall be borne by the Authority and paid against the Contractor's invoice in accordance with clause 33 (Payment Provisions). The Contractor shall be put in a position no better no worse than it would have been in had the Emergency not occurred, if such costs are not agreed, the matter shall be referred to the Dispute Resolution Procedure.

25.3 Public Safety Incident

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

25.3.2 Where it is agreed or determined that the Public Safety Incident was in fact caused by the negligent act or omission of the Contractor or any Contractor Related Party in the performance of the Works and/or the Services, the Contractor shall within 24 hours of such agreement or determination provide an update of the written proposals referred to in clause 25.3.1 (which update shall be subject to the same acceptance and implementation process as is set out in clause 25.3.1). If such proposals do not involve the termination or the replacement of any offending Contractor Related Party the Authority may require that the relevant Contractor Related Party's involvement in the Works and/or Services is terminated and that a replacement is appointed in accordance with clause 63 (Assignment and Sub-Contracting) within one hundred and twenty (120) Business Days of the notice by the Authority to that effect provided that in determining whether to exercise any right of termination of this Agreement or right to require the termination of the engagement of a Contractor Related Party:

- (a) the Authority shall act in a reasonable and proportionate manner having regard to the gravity of the Public Safety Incident, the identity of the person responsible for it and the number of such incidents that have previously occurred and the period over which they have occurred;

- (b) the Authority shall give all due consideration where appropriate to alternative action other than termination of the Agreement or the right to require the termination of the engagement of a Contractor Related Party; and
- (c) where the Public Safety Incident is caused by an employee of a Contractor Related Party acting independently of that Contractor Related Party and was not attributable to negligent management of that Contractor Related Party then any requirement of the Authority that the involvement of the relevant Contractor Related Party in the Works and/or Services is terminated shall not apply where within twenty (20) Business Days of the Authority's notice requiring termination, the Contractor procures that the employee's employment is terminated and (if necessary) procures the performance of such part of the Works and/or Services by another person.

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 the Output Specification and the Services Delivery Plan.

26.2 Authority Monitoring

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

26.3 Erroneous Monitoring Reports

Without prejudice to the Authority'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 four (4) month period,

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

26.4 Remedy of Erroneous Monitoring Reports

For the purposes of clause 26.3 (Erroneous Monitoring Reports), the Authority acknowledges that if the Contractor has otherwise failed to have demonstrated to the reasonable satisfaction of the Authority as required by clause 26.3 (Erroneous Monitoring Reports) 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 (Erroneous Monitoring Reports)), if in the following three (3) month period following the Authority notice (if it has not already been established) there have been no further erroneous reports of any kind,

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

26.5 Indemnity

If the Authority issues a notice under clause 26.3 (Erroneous Monitoring Reports), the Contractor shall bear its own costs and indemnify and keep the Authority indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to such increased level of monitoring arising due to circumstances under clause 26.3.1 (Erroneous Monitoring Reports).

27 NOT USED

28 Housing Provisions

28.1 NOT USED

28.2 NOT USED

28.3 Authority Functions

28.3.1 Authority Allocations

The Authority shall be entitled to allocate or nominate persons to become Tenants or Occupiers in respect of 100% of all Apartments throughout the Contract Period in accordance with the Allocation Protocol.

28.3.2 Landlord Allocations

Throughout the Contract Period the Contractor acknowledges and agrees and shall procure that the Landlord may only allocate or nominate persons to become Tenants of or otherwise permit any person to occupy any of the Apartments in accordance with the terms of the Allocation Protocol.

28.3.3 Allocation Protocol

The Authority shall comply with its obligations in the Allocation Protocol and the Contractor shall procure that the Landlord shall comply with the Landlord's obligations in the Allocation Protocol.

28.3.4 Tenancy Agreement

The Contractor shall procure that the Landlord shall enter into a Tenancy Agreement with each person allocated by the Authority pursuant to clause 28.3.1 (Authority Allocations) or by the Landlord pursuant to clause 28.3.2 (Landlord Allocations). The Contractor shall procure that the Landlord shall not vary the form of the Tenancy Agreement as at the Commencement Date (other than minor or immaterial changes or the insertion of a Tenant's details or such other changes necessary to make the Tenancy Agreement specific to a particular Tenant) unless such variations are required by law or any binding direction, guidance or order of the Regulation Committee or are approved by the Authority in accordance with the Review Procedure.

28.4 **Repair and condition of the accommodation**

The Contractor shall be responsible for all costs and liability in connection with any actions, claims, demands, costs, charges, damages, compensation, expenses and fines and penalties which may arise out of, or in consequence of, any Disrepair Action instigated in relation to an Apartment or any Common Parts.

29 **Employment Matters**

29.1 **No Relevant Transfers**

The Authority and the Contractor agree that as at the date of this Agreement there are no Authority Employees whose contracts of employment will, by virtue of the parties entering into this Agreement, have effect after the Relevant Service Transfer Date (or at any other time) as if originally made between those persons and the Contractor or any sub-contractor pursuant to TUPE.

29.2 **Offer of Employment/Transferring Employees and Retained Transferring Employees**

29.2.1 If it is determined or alleged that as a result of the arrangements set out in this Agreement the contract of employment of any person who is or was an Authority Employee has effect as if originally made between that person and the Contractor or any relevant sub-contractor pursuant to TUPE (**Transferring Employee**) then either party shall, upon becoming aware of such effect or allegation, notify the other in writing as soon as reasonably practicable thereafter and, in any event, within ten (10) Business Days of becoming aware of such effect or allegation (**Notification**).

29.2.2 Subject to any Authority Direction issued pursuant to clause 29.3 (Authority Direction), following a Notification:

- (a) the Authority shall have twenty (20) Business Days from and including the date of the Notification to offer re-employment to such Transferring Employee (if it wishes to do so) and to procure the acceptance by such Transferring Employee of that offer (**Offer Period**);
- (b) if such offer of re-employment is accepted within the Offer Period, the Authority shall notify the Contractor of this fact in writing and the Contractor shall (or shall procure that or the relevant sub-contractor shall) immediately release the Transferring Employee from his/her employment with the Contractor (or the relevant sub-contractor);
- (c) upon expiry of the Offer Period, provided that:

- (i) no such offer of employment as referred to in clause 29.2.2(a) has been made, or such offer has been made but not accepted pursuant to clause 29.2.2(a), and
- (ii) the Authority has consented (in writing) to any such dismissal (for the avoidance of doubt, the Authority shall not be obliged to consent and, instead, may notify the Contractor that it has issued or will be issuing an Authority Direction pursuant to clause 29.3, notwithstanding this, the Authority will endeavour to provide a response (either way) to any request for consent within ten (10) Business Days of such a request being received from the Contractor);

the Contractor or the relevant sub-contractor shall be entitled to dismiss any or all of the Transferring Employees by reason of Redundancy. The Contractor shall and shall procure that any sub-contractor shall carry out in the required manner any procedural obligation and any obligation to consult with the Transferring Employees or any of them, or their respective representatives, and shall use all reasonable endeavours to mitigate the amount of any costs payable in respect of each Transferring Employee; and

- (d) the Authority shall indemnify the Contractor (for itself and on behalf of any relevant Sub-Contractor) against any Transferring Employee Costs reasonably incurred by the Contractor (or by a relevant Sub-Contractor) provided that (i) the Contractor (and any relevant Sub-Contractor) has complied fully with its obligations under this clause 29.2.2 (including but not limited to clause 29.2.2(c)(ii) above), and (ii) without prejudice to clauses 29.2.2(b) and 29.2.2(c)(ii), notice of termination of the Transferring Employee's employment is served on the Transferring Employee by a date no later than the date three (3) calendar months and twenty (20) Business Days from and including the Relevant Service Transfer Date.

29.2.3 If any Transferring Employee:

- (a) does not accept an offer of re-employment by the Authority within the timescales set out in clause 29.2.2(a); and
- (b) is not dismissed by the Contractor or the relevant sub-contractor pursuant to clause 29.2.2(b) within the time scales set out in clause 29.2.2(d)

such Transferring Employee will be treated as having transferred under TUPE to the Contractor or the relevant sub-contractor (**Retained Transferring Employee**).

29.2.4 Without prejudice to clause 29.3 (Authority Direction), the Contractor or the relevant sub-contractor shall be responsible for all liabilities arising in respect of each Retained Transferring Employee from and including the Relevant Service Transfer Date.

29.2.5 The Authority shall indemnify 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:

- (a) in connection with or as a result of any claim or demand (excluding any Equal Pay Ruling or any claim or demand pursuant to any Equal Pay Legislation) by any Retained Authority Transferring Employee arising out of the employment

of any such Retained Authority Transferring Employee provided that this arises from any act, fault or omission of the Authority in relation to any such Retained Authority Transferring Employee prior to the Relevant Service Transfer Date (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 a relevant transfer under TUPE; and/or

- (b) as a result of an Equal Pay Ruling in respect of any Retained Authority Transferring Employee, to the extent only that such Direct Losses are in respect of the period of the Retained Authority Transferring Employee's employment with the Authority before the Relevant Service Transfer Date.

29.2.6 Subject to clause 29.2.5(b), where any liability in relation to any Retained Authority Transferring Employee, in respect of his or her employment by the Authority, 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 Authority 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.

29.2.7 The indemnities contained in clause 29.2.5 and the provisions of clause 29.2.6 shall apply as if references in those clauses to any Retained Authority Transferring Employee also included a reference to any Retained Incumbent Provider Transferring Employee and references to any act, fault or omission of the Authority also included a reference to the relevant incumbent provider employer of the Retained Incumbent Provider Transferring Employee prior to the Relevant Service Transfer Date to the extent only that the Authority recovers any sum in respect of the subject matter of those indemnities from such relevant incumbent provider employer of the Retained Incumbent Provider Transferring Employee under any indemnity or other legal entitlement it has against such incumbent provider. The Authority will use all reasonable endeavours to recover any such sums under any such entitlement as is mentioned in this clause 29.2.7.

29.3 Authority Direction

29.3.1 In the event that there are any Transferring Employees, the Authority may, at its absolute discretion, issue an Authority Direction. If the Authority issues an Authority Direction the Contractor shall and shall procure that any sub-contractor shall comply fully with such Authority Direction. An Authority Direction issued under this clause may include (without limitation) requirements regarding the future employment of any Transferring Employee.

29.3.2 If as a direct result of complying with such an Authority Direction, the Contractor or the relevant Sub-Contractor incurs the cost of any additional direct employment costs, an appropriate adjustment to the Unitary Charge will be made, provided that the Contractor shall and shall procure that any sub-contractor takes all reasonable steps requested by the Authority to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

29.4 Compliance with Legislation and Equality Requirements

29.4.1 The Contractor shall comply and shall procure that each sub-contractor and all persons employed or engaged by any sub-contractor in connection with the provision of any of the Services shall comply at all times with all applicable laws in relation to health and safety at work and anti-discrimination and equal opportunities.

29.4.2 The Contractor shall comply and shall procure that each sub-contractor shall comply with the Equality Requirements.

29.5 Contractor Indemnities

29.5.1 The Contractor shall indemnify and keep indemnified in full the Authority and each and every service provider who shall provide any service equivalent to any of the Services after expiry or earlier termination of this Agreement where an Exit Event occurs (**Future Service Provider**) against:

- (a) claims in respect of all emoluments and all other contractual or statutory payments unpaid by the Contractor or any sub-contractor to any person entitled to such payments from the Contractor or any sub-contractor 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 which relate to any period of employment or engagement with the Contractor or any sub-contractor on or after the Relevant Service Transfer Date, but prior to the date of expiry or termination of this Agreement where an Exit Event occurs, and all income tax and pension and national insurance contributions payable thereon; and
- (b) (insofar as clause 29.5.1(a) does not apply) all Direct Losses incurred by the Authority or any Future Service Provider in connection with or as a result of any claim or demand against the Authority or any Future Service Provider by or on behalf of 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; and
- (c) (save that there is not intended to be any double recovery under this clause 29.5.1(c) and the other provisions of clause 29.5) all Direct Losses arising from a breach by the Contractor or any sub-contractor of its obligations under clause 29.4 (Compliance with Legislation and Equality Requirements); and

save that the indemnities in this clause 29.5.1 (Contractor Indemnities) shall not apply to the extent that the claim arises from a wrongful act or omission of the Authority.

29.5.2 The Contractor shall indemnify and keep indemnified in full the Authority and each and every Future Service Provider against:

- (a) in respect of any Transferring Employees, all Direct Losses incurred in connection with or as a result of:
 - (i) any proposed or actual change by the Contractor or any sub-contractor to any Transferring Employee's working conditions, terms or conditions or any proposed measures of the Contractor or the relevant sub-contractor which are to the material detriment of any

Transferring Employee whether such claim arises before or after the Relevant Service Transfer Date; and

- (ii) any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Contractor or sub-contractor to the Transferring 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.
- (b) all Direct Losses incurred in relation to any liability to 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 arising from any claim or demand under any Equal Pay Legislation.

29.6 Retendering

29.6.1 Clauses 29.6.2 and 29.6.3 (Retendering) shall apply in respect of the period:

- (a) of twelve (12) Months immediately preceding the expiry of this Agreement where the Authority has served an Expiry Option Notice on the Contractor; and/or
- (b) following the service of a Termination Notice in which the Authority has notified the Contractor that it is exercising its Termination Option;

29.6.2 The Contractor shall or shall procure that the relevant sub-contractor shall:

- (a) on receiving a request from the Authority provide in respect of the Assigned Employees full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor or of any sub-contractor as the case may be until immediately before the Termination Date, would be Returning Employees (**Retendering Information**);
- (b) the Retendering Information is provided to the Authority (and/or, at the Authority's request, to the Future Service Provider) promptly and at no cost to the Authority (or the Future Service Provider); and
- (c) notify the Authority (and/or, at the Authority's request, the Future Service Provider) forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise.

29.6.3 The Contractor and any relevant sub-contractor shall:

- (a) be precluded from making any material increase or decrease in the numbers of Assigned Employees;
- (b) be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent; and

- (c) be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Authority's prior written consent.

29.6.4 Where an Exit Event occurs:

- (a) without prejudice to clauses 29.6.2 and 29.6.3 (Retendering), the Contractor shall provide and shall procure that any sub-contractor shall provide the Employee Liability Information to the Authority at such time or times as are required by TUPE, and shall warrant at the time of providing such Employee Liability Information, that such information will be updated to take account of any changes to such information as is required by TUPE; and
- (b) the Contractor shall indemnify and shall keep indemnified in full the Authority and, at the Authority's request, any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Contractor or sub-contractor failing to provide or promptly to provide the Authority and/or any Future Service Provider with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Contractor by the Authority and was materially inaccurate or incomplete when originally provided (save where the Authority had rectified this subsequently by providing accurate and complete information to the Contractor).

29.7 Termination/Expiry of Agreement

29.7.1 Where an Exit Event occurs, the Authority and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to any of the relevant Services but the position shall be determined in accordance with the Law at the date of expiry or termination (as the case may be) and this clause is without prejudice to such determination. Where there is a relevant transfer pursuant to TUPE arising in connection with an Exit Event (the date of such relevant transfer being termed the Return Date), the provisions of this clauses 29.7.2, 29.7.3 and 29.7.4 (Termination/Expiry of Agreement) will apply.

29.7.2 The Contractor:

- (a) 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 any 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;
- (b) shall be responsible for the apportioned cost of any obligations (whether statutory, regulatory, contractual or otherwise) relating to, payable or accruing in respect of, the Returning Employees up to the Return Date (including

without limitation, wages, bonuses, commission, pension, holiday pay, costs, expenses, payments of PAYE, tax, social security and national insurance contributions) irrespective of whether they are payable before on or after the Return Date, and the Contractor shall (i) reimburse in full the Authority (or, at the Authority's request, any Future Service Provider) within ten (10) Business Days of a request by the Authority for the sum of any such payment made in respect of any Returning Employee in relation to any such obligations/entitlements, and (ii) indemnify the Authority and any Future Service Provider in respect of any Direct Losses incurred in connection with non-payment (or delayed payment) by the Contractor.

29.7.3 Without prejudice to clause 29.7.2 (Termination/Expiry of Agreement), the Contractor shall:

- (a) remain (and shall procure that any relevant sub-contractors shall remain) responsible for all the Contractor's or sub-contractor's employees (other than the Returning Employees) on or after the time of expiry or termination of this Agreement and indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Contractor's or sub-contractor's employees who do not constitute the Returning Employees (save that there is not intended to be any double recovery under this clause 29.7.3(a) (Termination/Expiry of Agreement) and clauses 29.5.1(a) or 29.5.1(b) (Contractor Indemnities));
- (b) in respect of those employees who constitute Returning Employees, indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Contractor or any sub-contractor to comply with its or their obligations under Regulation 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply (save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Service Provider); and
- (c) indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Contractor or sub-contractor to any Assigned Employees or Returning Employees or their representatives whether before on or after the Return Date and whether liability for any such claim arises before on or after the Return Date.

29.7.4 The Authority shall:

- (a) (and shall use reasonable endeavours to procure that any Future Service Provider shall) comply with its obligations under Regulation 13 of TUPE;

- (b) indemnify the Contractor (for itself and for the benefit of each relevant Sub-Contractor) in respect of those employees who constitute Returning Employees against all Direct Losses incurred by the Contractor or any relevant Sub-Contractor as a result of:
 - (i) failure by the Authority to comply with its obligations under Regulation 13 of TUPE (save to the extent that any such failure arises as a result of any act or omission of the Contractor or any relevant sub-contractor); and
 - (ii) any failure by any Future Service Provider to comply with its obligations under Regulation 13 of TUPE (save to the extent that any such failure arises as a result of any act or omission of the Contractor or any relevant sub-contractor), to the extent only that the Authority recovers any sum in respect of the subject matter of this indemnity from such Future Service Provider under any indemnity or other legal entitlement it has against such Future Service Provider. The Authority will use reasonable endeavours to recover any such sums under any such entitlement as in mentioned in this clause.

29.8 Offer of Employment on Exit

29.8.1 If TUPE does not apply in respect of an Exit Event:

- (a) the Authority shall (and shall use reasonable endeavours to procure that each Future Service Provider shall) offer employment to the persons employed by the Contractor or a sub-contractor in the provision of the Services immediately before the Return Date;
- (b) if an offer of employment is made in accordance with clause 29.8.1 (Offer of Employment on Exit), 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 Return Date including full continuity of employment, except that the Authority or Future Service Provider may at its absolute discretion not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of clause 29.6.3 (Retendering);
- (c) where any such offer as referred to in clause 29.8.1 (Offer of Employment on Exit), is accepted, the Contractor shall indemnify and keep indemnified in full the Authority and any Future Service Provider on the same terms and conditions as those set out in clauses 29.5 (Contractor Indemnities) and 29.7.3 (Termination/Expiry of Agreement) of this Agreement as if there had been a relevant transfer under TUPE in respect of each and every employee who has accepted any such offer and for the purposes of this clause 29 (Employment Matters) each and every such employee shall be treated as if they were a Returning Employee;

29.8.2 For the avoidance of doubt, where any such offer as referred to in clause 29.8.1 (Offer of Employment on Exit), is not accepted and TUPE does not apply, the employee shall remain an employee of the Contractor or sub-contractor as appropriate.

29.9 Conduct of claims & Indemnity Assignment

29.9.1 Clause 56.7 (Conduct of Claims) of this Agreement shall apply where any claim is made in respect of any of the indemnities given under this clause 29 (Employment Matters).

29.9.2 The Authority shall be entitled to assign the benefit of the indemnities in clauses 29.5, 29.6.4(a), 29.7.2(b), 29.7.3, 29.8.1(b) and 29.10 to any Future Service Provider.

29.10 Sub-contractors

(Without prejudice to clause 63 (Assignment and Sub-Contracting), in the event that the Contractor enters into any sub-contract in connection with this Agreement, it shall impose obligations on the relevant sub-contractor in the same terms as those imposed on it pursuant to this clause 29 (Employment Matters) and clause 30 (Pensions) and shall procure that the sub-contractor complies with such terms. Without prejudice to the other indemnity provisions in this clause 29 (Employment Matters) and without there being any double recovery, the Contractor shall indemnify and keep the Authority and any Future Service Provider indemnified in full against all Direct Losses incurred as a result of or in connection with any failure on the part of the Contractor to comply with this clause and/or the relevant sub-contractor's failure to comply with such terms and/or any act fault or omission of any sub-contractor.

30 Pensions

30.1 The Authority and the Contractor agree that, as at the date of this Agreement, there are no Authority Employees whose contracts of employment will, by virtue of the parties entering into this Agreement, have effect after the Relevant Service Transfer Date (or at any time) as if originally made between those persons and the Contractor or any Sub-Contractor pursuant to TUPE. Consequently, the parties agree that no obligation on the Contractor or relevant Sub-Contractor:

30.1.1 to gain admitted body status to the Local Government Pension Scheme for the purposes of the Local Government Pension Scheme Regulations 1997 and the Local Government Pension Scheme (Amendment etc) Regulations 1999;

30.1.2 to afford any individual pension rights which are certified by the Government Actuary's Department as being broadly comparable to or better than the pension scheme of which they were or were eligible to be members prior to the Relevant Service Transfer Date,

is triggered by the Relevant Service Transfer Date (or at any other time).

30.2 In the event that, by virtue of this Agreement, there is a Transferring Employee clauses 29.2 (Offer of Employment/Transferring Employees and Retained Transferring Employees) to clause 29.3 of this Agreement shall apply.

31 Employees - General

31.1 Disclosure and Barring

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

- (a) each Named Employee is questioned as to whether he or she has any Convictions; and
- (b) 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;

a copy of the results of such checks as are referred to in clause 31.1.1(b) are notified to the Authority.

31.1.2 The Contractor shall procure that no person who appears on a Barred List following the results of a Disclosure and Barring Service check pursuant to clause 31.1.1 shall be employed or engaged in the performance of the Services.

31.1.3 The Contractor shall procure that no person who discloses any Convictions or ASBOs, or who is found to have any Convictions following the results of a Disclosure and Barring Service check pursuant to clause 31.1.1, is employed or engaged without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

31.1.4 The Contractor shall procure that the Authority is kept advised at all times of any member of staff involved in the provision of the Services who, subsequent to his/her commencement of employment as a member of staff, receives a Conviction or ASBO or whose previous Convictions or ASBOs become known to the Contractor (or any employee of a sub-contractor involved in the provision of the Services). For the avoidance of doubt, in the event that any member of staff involved in the provision of the Services is subsequently added to a Barred List, the Contractor shall procure that such member of staff is immediately removed from the Sites and shall cease to be engaged in the performance of the Services.

31.1.5 Subject to clause 31.1.6, this clause 31.1 shall not apply to those individuals who shall be required by the Contractor or any Sub-Contractor to attend on Site to provide emergency reactive services. In the case of such individuals the Contractor shall procure that the sub-contractor shall ensure that such individuals are accompanied by a member of the Contractor or Sub-Contractor's staff who has been properly employed in accordance with this clause 31.1.

31.1.6 Notwithstanding the provisions of clause 31.1.5, the provisions of clause 31.1.2, 31.1.3 and 31.1.4 shall apply to those individuals who shall be required by the Contractor or any Sub-Contractor to attend on Site to provide emergency reactive services to the extent that the Contractor becomes aware of any of the circumstances provided for in clauses 31.1.2, 31.1.3 and 31.1.4 (as applicable).

31.2 **Conduct of Staff**

The Authority (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 Authority shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or

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

31.3 Admission to the Sites

The Contractor shall at least twenty (20) Business Days before the date on which the Contractor first provides any of the Services provide the Authority with a written list of the names and addresses of all employees or other persons who it expects may require admission to each Site in connection with the provision of the Services, specifying the capacities in which those employees or other persons are concerned with the Services and giving such other particulars as the Authority may require. The Contractor shall update this information as and when any such individuals are replaced or complemented by others, not less than twenty (20) Business Days before their inclusion. The decision of the Authority on whether any person is to be refused admission to a Site shall be final and conclusive and the Authority shall not be obliged to give reasons for its decision. For the avoidance of doubt, the provisions of this clause 31.3 (Admission to the Sites) shall not apply to those individuals who shall be required by the Contractor or any sub-contractor to attend on Site to provide emergency reactive services and/ or to rectify any Snagging Items. 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 Site by a member of the Contractor or sub-contractor's staff who has been properly notified to the Authority in accordance with the terms of this clause 31.3 (Admission to the Sites).

31.4 Refusal of Admission

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

31.5 Decision to Refuse Admission

The decision of the Authority as to whether any person is to be refused admission to the Sites pursuant to clause 31.4 (Refusal of Admission) shall be final and conclusive. If the Authority declines to give reasons and/or where reasons given are found to be unreasonable for exercising its rights under clause 31.3 (Admission to the Sites) and clause 31.4 (Refusal of Admission) and clause 31.6 (Removal from Sites), the Authority shall indemnify the Contractor and keep the Contractor indemnified from and against any injury, claims, costs and expenses (including legal expenses) and or damage suffered or incurred by the Contractor, provided that the Contractor or the relevant sub-contractors has used its reasonable endeavours to re-deploy that person elsewhere and/or to mitigate the claim.

31.6 Removal from Sites

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

31.7 Relief from Deductions

Where the Authority exercises its rights under this clause 31 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 (Employees - General); or

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

then the Authority shall give the Contractor such relief from deductions for a reasonable period to allow the Contractor or any sub-contractor to make alternative arrangements to replace the person whose employment has been refused or whose removal has been requested. For the avoidance of doubt, any relief from deductions given under this clause 31.7 (Relief from Deductions) 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 procure that there are set up and maintained by it and by all sub-contractors involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Legislation and Good 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 Authority.

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 and including the information required by clause 74 (Contractor's Records and Provision of Information) (**the Operating Manual**).

31.10.2 The Contractor shall at the request of the Authority provide the Authority with access to the Operating Manual in order to demonstrate that the Contractor has complied with its obligation to maintain and update the Operating Manual under clause 31.10.1 (Maintenance of Manual).

31.10.3 If the Authority has exercised its Termination Option or Expiry Option (as the case may be) on termination of this Agreement (howsoever arising including expiry), the Contractor shall within ten (10) Business Days provide a copy of the Operating Manual to the Authority.

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) Business Days following the Commencement Date, the Contractor shall submit to the Authority's Representative a proposed quality assurance system for the Works complying with ISO 9001 or, where it does not so comply, the system set out in the Contractor's Proposals.

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 Authority (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:

- (a) ensure the effective operation of and implementation of the aforementioned quality assurance system;
- (b) audit the aforementioned quality assurance system at regular intervals and report the findings of such audit to the Contractor and the Authority;
- (c) review the aforementioned quality assurance system at intervals agreed with the Authority to ensure their continued suitability and effectiveness; and
- (d) liaise with the Authority on all matters relating to quality assurance.

31.11.5 The Authority may carry out periodic audits of the aforementioned quality assurance systems at approximate intervals of three (3) months and may carry out other periodic monitoring, spot checks and auditing of the Contractor's quality systems. The Contractor shall procure that the Authority shall have a like right in respect of any relevant sub-contractors. The Contractor shall co-operate and shall procure that any relevant sub-contractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its right under this clause 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 a breach of security which is carried out by or on behalf of the Authority and:

- (a) shall use its reasonable endeavours to make its employees (and other Contractor Related Parties) identified by the Authority available to be interviewed by the Authority for the purposes of the investigation; and
- (b) shall, subject to any legal restriction on their disclosure, provide all copies of documents, records or other material of any kind which may reasonably be required by the Authority for the purposes of the investigation. The Authority

shall have the right to retain copies of any such material for use in connection with the investigation.

31.12.2 The Authority shall, insofar as is practical, inform the Contractor of any specific or general security information which would reasonably be expected to affect the security of the Contractor or any Contractor Related Party or their property.

31.12.3 The Contractor shall comply with the Authority's reasonable reporting requirements relating to infectious and notifiable diseases to the extent made known to the Contractor.

32 Adaptations

32.1 Subject to Clause 32.1A, the Contractor shall source, supply, install, maintain and/or remove all Adaptations from the Site that are required in writing by the Authority to be so sourced, supplied, installed, maintained and/or removed ("**Adaptations Works**").

32.1A The Contractor shall be entitled to refuse any request received from the Authority pursuant to clause 32.1 in relation to Adaptations Works where, in the reasonable opinion of the Contractor, the carrying out of such Adaptations Works would affect the achievement of any Planned Services Commencement Date.

32.2 The Contractor shall:

32.2.1 maintain an accurate and up to date record of Adaptations Works undertaken by it; containing the information prescribed by clause 32.3; and

32.2.2 make the same available to the Authority upon written request and as a precondition of claiming any payment in respect of Adaptation Works pursuant to this Agreement.

32.3 As a minimum, the record of Adaptations Works shall include the following information:

32.3.1 the date the Adaptations Works were undertaken;

32.3.2 the identity and/or location of the Zones (and any relevant areas or rooms within Zones) in which the Adaptations Work was undertaken;

32.3.3 a clear and transparent breakdown of the costs incurred in respect of the Adaptation Works, including:

(a) materials;

(b) labour;

(c) margin/profit,

clearly and transparently broken down as between the Contractor and any sub-contractor (if relevant);

32.3.4 the required maintenance regime for each category of Adaptation and an estimate of the costs associated with such maintenance;

32.3.5 accurate details of any relevant warranties applying to the Adaptations; and

- 32.3.6 the current balance of the Works Adaptations Threshold and/or the Services Adaptation Threshold (as applicable), which the Contractor shall procure is never be more than one (1) Business Day out of date.
- 32.4 The following provisions shall apply in relation to the carrying out of Adaptations Works at a Site following the issue of the relevant Certificate of Availability:
- 32.4.1 the Contractor shall generally take such action as may be required pursuant to clause 32.1 in accordance with the Output Specification and Service Delivery Plan;
- 32.4.2 in respect of the installation and maintenance of Adaptations, the Contractor shall ensure that all relevant manufacturer's instructions are complied with; and
- 32.4.3 in respect of the removal of Adaptations, the following provisions shall apply:
- (a) the Contractor shall use its best endeavours to ensure that each Adaptation that is to be removed is removed in such a manner that does not prevent its future re-use;
 - (b) following removal, the Contractor shall assess (acting reasonably and in good faith) whether or not the Adaptation in question may be re-used;
 - (c) if the Contractor (acting reasonably and in good faith) assesses that the Adaptation in question may be re-used, the Contractor shall store such Adaptation in a suitable secure location and shall keep a record of all such stored items (and the Contractor shall procure that such record is never more than one (1) Business Day out of date);
 - (d) if the Contractor (acting reasonably and in good faith) assesses that the Adaptation in question is not capable of being re-used, it shall notify the Authority and the Authority's Representative in writing and shall give them a period of ten (10) Business Days to inspect the item to assess whether or not it or they agree with the Contractor's assessment (and in seeking such agreement the Authority shall act reasonably and in good faith);
 - (e) if the Authority or the Authority's Representative agrees with the Contractor, or does not respond within ten (10) Business Days of the written notice, the Contractor shall dispose of the removed Adaptation without any further delay. If the Authority or the Authority's Representative does not agree with the Contractor's assessment, the Contractor shall store the relevant item in accordance with clause 32.4.3(c); and
 - (f) the Contractor shall take reasonable care of the stored Adaptations and shall ensure that they are insured in accordance with the terms of this Agreement.
- 32.5 The following provisions shall apply in relation to the payment for Adaptations Works at a Site following the issue of the relevant Certificate of Availability:
- 32.5.1 the cost of the Adaptations Works shall be calculated by reference to the Adaptations Works Schedule of Rates, and to the extent that the Adaptations Works Schedule of Rates does not apply or is not relevant, the Contractor shall procure that such costs shall be reasonable and in accordance with Good Industry Practice;
- 32.5.2 the Contractor shall undertake Adaptations Works up to the value of the Services Adaptations Threshold in any Contract Year in accordance with clause 32.1 without

being entitled to any additional payment or to raise any invoice for the same pursuant to clause 32.5.4;

32.5.3 if, in any Contract Year, the value of Adaptations Works is less than the Services Adaptations Threshold, the difference shall be carried forward and added to the Adaptations Threshold for the next following Contract Year (and no indexation shall apply to the amount so carried forward pursuant to this clause);

32.5.4 subject to clause 32.5.5, if, in any Contract Year, the Value of Adaptations Works is greater than the Services Adaptations Threshold, the excess may be invoiced by the Contractor pursuant to clause 33 (Payment Provisions) and such excess shall be payable by the Authority as an Additional Charge;

32.5.5 in the penultimate Month of the Contract Term, the Authority may set off from the Gross Monthly Charge an amount equal to any unused portion of the Adaptations Threshold, provided that any Adaptation Works undertaken in the final month of the Contract term shall be paid for pursuant to clause 32.5.4 (and any such unused portion shall become due and payable by the Contractor to the Authority with effect from the date that the penultimate payment of the Net Monthly Payment becomes due and payable).

32.5A1 All Adaptations Works requested by the Authority at a Site prior to the issue of the relevant Certificate of Availability shall be deemed to be Low Value Changes and the provisions of Part 2 of the Change Protocol shall apply, except the references to Catalogue shall be construed as references to the Adaptation Works Schedule of Rates and the Contractor shall undertake Adaptations Works up to the Works Adaptations Threshold without being entitled to any additional payment or to raise an invoice for the same pursuant to paragraph 5 of Part 2 of the Change Protocol.

32.6 Not later than ten (10) Business Days following the expiry of each Contract Year during the Services Period, the Contractor shall submit in writing to the Authority:

32.6.1 its view of the Services Adaptations Threshold for the Contract Year in which the submission is made;

32.6.2 any amount carried forward from the previous Contract

32.6.3 the amount of indexation applied; and

32.6.4 a schedule of stored materials.

The Authority shall confirm to the Contractor whether it agrees with Services Adaptations Threshold within ten (10) Business Days of such submission. In the event of any disagreement that cannot be resolved within ten (10) Business Days of the dispute arising, either party may refer to same to dispute resolution pursuant to clause 60 (Dispute Resolution Procedure).

32A Utilities

32A.1 The Contractor shall be responsible for the provision of Utilities to the Sites and shall procure that any agreement entered into with any utility provider for the provision of any of the Utilities to the Sites (a **Utility Contract**) shall be on Economically Advantageous terms and conditions. The Contractor shall supply a copy of any Utility Contract to the Authority within ten (10) Business Days of such Utility Contract being entered into.

- 32A.2 If the Authority, acting reasonably, considers that a Utility Contract is not on Economically Advantageous terms and conditions it shall notify the Contractor accordingly and provide with such notice such supporting information as is reasonable and relevant to demonstrate to the Contractor that such Utility Contract is not on Economically Advantageous terms and conditions (a **Challenge**). The Authority shall only be entitled to exercise its right to issue a Challenge in respect of a Utility Contract once every five (5) Years.
- 32A.3 If the parties agree or in default of agreement it is determined pursuant to the Dispute Resolution Procedure that a Utility Contract is not on Economically Advantageous terms and conditions then the parties shall use reasonable endeavours to source and agree a Utility Contract with alternative Economically Advantageous terms and conditions with the existing utility provider or with an alternative utility provider.
- 32A.4 If the parties fail to agree a Utility Contract with alternative Economically Advantageous terms and conditions for a Utility Contract with the existing or an alternative utility provider pursuant to clause 32A.3 (Utilities) within forty (40) Business Days of the date of agreement or determination referred to in clause 32A.3 (Utilities) (the **Cut Off Date**) then the Contractor shall conduct a market testing exercise in respect of the relevant Utility Contract.
- 32A.5 The Contractor shall within twenty (20) Business Days of the Cut Off Date supply to the Authority its market testing proposal setting out the method of market testing (which, for the avoidance of doubt, may provide for a desktop market testing exercise to be carried out by an independent energy consultant), the proposed tenderers and the form and content of tender documents to be delivered to prospective tenderers (Market Testing Proposal). The parties, acting reasonably, shall agree the Market Testing Proposal and the Market Testing Proposal shall incorporate all of the matters agreed by the parties.
- 32A.6 The Contractor shall manage (or procure the management by the Housing Management Contractor of) the market testing exercise in accordance with the Market Testing Proposal agreed or determined in accordance with clause 32A.5 (Utilities).
- 32A.7 The Contractor shall bear all of its own costs, fees and expenses associated with the market testing exercise save where pursuant to clause 32A.5 (Utilities) it is agreed that a desktop market testing exercise is to be carried out by an independent energy consultant in which case the costs of engaging such energy consultant shall be shared equally by the parties.
- 32A.8 The Contractor shall provide to the Authority as soon as reasonably practicable a copy of each response to the market testing exercise or a copy of the results of the desktop market testing exercise carried out by an independent energy consultant.
- 32A.9 The Contractor shall select:
- (a) in respect of tenders received for the provision of a Utility Contract, the most Economically Advantageous tender received in respect of the provision of that Utility; and
 - (b) in respect of a desktop exercise carried out by an independent energy consultant the most Economically Advantageous utility provider determined as a result of such exercise.

PART 5 - PAYMENT

33 Payment Provisions

33.1 Payment of the Net Monthly Payment

The Authority shall pay the Contractor the Net Monthly Payment in respect of each Payment Period, calculated in accordance with Schedule 4 (Payment Mechanism).

33.2 Report and Invoice

Within ten (10) Business Days of the end of each Payment Period the Contractor shall submit to the Authority:

33.2.1 a report showing for that Payment Period, the Net Monthly Payment and setting out individually each item listed in Part 8 of Schedule 4 (Payment Mechanism); and

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

33.3 Final Payment Period

33.3.1 During the final two Payment Periods, in addition to the amounts referred to in clause 33.2.1 (Report and Invoice) the Authority may withhold an amount equivalent to the average per Payment Period of the sum of Unavailability Deductions and Performance Deductions for the previous six (6) Payment Periods until such time as the Contractor shall have provided a report to the Authority in respect of those Payment Periods containing the information set out in clause 33.2.1 (Report and Invoice).

33.3.2 On receipt of the reports from the Contractor in respect of the final two Payment Periods the Authority may retain from the amounts withheld pursuant to clause 33.3.1 (Final Payment Period) a sum equivalent to the sum of Unavailability Deductions and Performance Deductions identified in the report or any other amount agreed by the parties or determined pursuant to clause 60 (Dispute Resolution) as owing to the Authority. The Authority shall pay the balance of any monies withheld to the Contractor or if it is agreed or determined the Contractor owes monies to the Authority in excess of those sums withheld, the Contractor shall pay such additional amounts to the Authority, 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 Authority pursuant to clause 33.3.1 (Final Payment Period) or from the date on which over payment was made (in the case of excessive claims by and overpayment to the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

33.4 Payment

33.4.1 Subject to clause 33.5 (Disputed Amounts), the Authority shall pay the amount stated in any invoice submitted under clause 33.2 (Report and Invoice) within fifteen (15) Business Days of its submission.

33.4.2 Where a report shows a net amount owed by the Contractor to the Authority, the Contractor shall pay that amount to the Authority within fifteen (15) Business Days of

the report or, at the option of the Authority, carry forward that amount to the next report in reduction of amounts which would otherwise have been owed by the Authority to the Contractor.

33.5 **Disputed Amounts**

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

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

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

33.6 **Response to Authority Notice**

Within five (5) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to clause 33.5.2 (Disputed Amounts), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:

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 Authority Notice)) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to clause 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 Authority has withheld any amount which the Contractor was entitled to be paid;
or

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

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

33.9 **Rights of Set Off**

The Contractor shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may (subject to clause 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.

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 Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with this Agreement and payable by the Authority to the Contractor.

33.12 **European Monetary Union**

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

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

- (a) sterling ceases to be the lawful currency of the United Kingdom and is replaced by the euro; or
- (b) sterling and the euro are at the same time recognised by the Bank of England as the lawful currency of the United Kingdom, and the Authority so requires,

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

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 Authority or the Contractor so require, the Project Documents will be amended to the extent reasonably necessary to reflect the implementation of Monetary Union and to put the parties in the same position, so far as possible, that they would have been in had Monetary Union not occurred.

33A Rents

33A.1 Rents

- (a) The Landlord shall be entitled to charge and retain Rents from Tenants.
- (b) The Contractor shall procure that the Landlord shall not charge Tenants Rent that exceeds the Agreed Rent (save where the Authority has agreed to such Rents being in excess of the Agreed Rent under clause 33A.6 (Affordable Rent)).

33A.2 Information

- (a) The Contractor shall procure that the Landlord gives to the Authority at least thirty (30) days notice (either written or using an electronic notification system) (the **Rent Notice**) prior to:
 - (i) the Planned Services Commencement Date for a Phase; and
 - (ii) the date upon which the Landlord proposes to serve on any Tenant of an Apartment any notice of increase in the Rent to be charged pursuant to a Tenancy Agreement (Rent Increase Notice),

of the Rent to be charged pursuant to a Tenancy Agreement to each Tenant in an Apartment included in the Phase (in the case of clause 33A.2(a)(i)) or subject to the Rent Increase Notice (in the case of clause 33A.2(a)(ii)) until the end of March next occurring following the Rent Notice. The Rent Notice shall include details of the proposed Rent to be charged, how the Rent has been calculated and evidence that the Rent does not exceed the Agreed Rent.

- (b) The Authority shall notify the Contractor and the Landlord in writing within fifteen (15) days of receipt of the Rent Notice whether or not it agrees that the proposed Rent does not exceed the Agreed Rent. If the Authority fails to respond within the specified timescale the Landlord shall be free to proceed to charge the proposed Rent set out in the Rent Notice. If the Authority disagrees then the Authority, the Contractor and the Landlord shall within five (5) days of receipt of the Authority's

notice meet to discuss and agree the level of Rent to be charged. In default of an agreement before the date the proposed Rent is due to be charged to a Tenant the Landlord shall be entitled to proceed to charge the proposed Rent set out in the Rent Notice but the provisions of clause 33A.3 (Dispute) shall apply.

33A.3 Dispute

If the Authority, acting reasonably, considers that the Rent proposed to be charged in a Rent Notice is in excess of the Agreed Rent or any such higher rents as are agreed under clause 33A.6 and the Authority, the Contractor and the Landlord have failed to agree the proposed Rent to apply pursuant to clause 33A.2(b) above then the level of Rent to be charged from the next occurring April following the Rent Notice (which shall, for the avoidance of doubt, include determination of any proposed Rent increase for the year following April until the next occurring March) shall be determined by the Dispute Resolution Procedure.

33A.4 Rebate

Where it has been agreed or determined pursuant to clause 33A.3 (Dispute) that the Landlord has charged Rent to a Tenant in excess of the Agreed Rent (or such higher rent as may have been agreed by the Authority under clause 33A.6) the Contractor shall procure that the Landlord shall reimburse the amount of any excess to the Tenant concerned (and the Contractor shall procure that the terms of the Tenancy Agreement between each Tenant and the Landlord provide for such) save where a Tenant is entitled to receive housing benefit in relation to his tenancy, in which case the Contractor shall procure that the Landlord shall reimburse the excess Rent to the Authority up to the amount of the housing benefit to which the Tenant is entitled (or would be entitled based upon the Agreed Rent).

33A.5 No Formula for Rent Calculation

- (a) If the Rent Influencing Regime changes such that it no longer contains any formula or guidelines for setting Rents and/or Service Charges then the Landlord shall be entitled to charge and retain Rents and/or Service Charges from Tenants which are agreed in advance with the Authority (such agreement not to be unreasonably withheld or delayed) having regard to:
- (i) the Contractor's costs set out in the Base Case;
 - (ii) any changed circumstances or requirements impacting upon the Contractor's costs set out in the Base Case;
 - (iii) any other relevant guidance (if any) issued from time to time by the Regulation Committee on the calculation of rents and/or service charges in the social housing sector, or any relevant guidance or statement on social rent policy issued from time to time by the Government;
 - (iv) the rents and/or service charges charged by other social housing providers for properties the same or similar to the Apartments operating in the city of Kingston upon Hull;
 - (v) the level of housing benefit or other benefits available to tenants in the social housing sector in the city of Kingston upon Hull for accommodation such as the Apartments; and

- (vi) any other relevant factors, including the provisions of clause 52 (Change in Law).

33A.6 Affordable Rent

The Contractor shall not be entitled to convert any Apartments the subject of this Agreement to the Affordable Rent Model (or, subject to clause 33A.5, any other rent or ownership including shared ownership model) without the prior written consent of the Authority such consent to be at the Authority's sole discretion. The Authority must act reasonably in giving such consent if Legislation or Guidance then current requires the Contractor to charge such Rents.

33B Service Charges

33B.1 Service Charge Services

- (a) The Contractor shall ensure that all Tenants to be charged in respect of Service Charge Services are properly consulted as to the range and nature of proposed Service Charge Services in advance of the provision of such services.
- (b) The Contractor shall ensure that the range and nature of Service Charge Services provided are in accordance with Tenants' wishes in respect of such services, to the extent such wishes are reasonable and in accordance with the provisions of this Agreement.
- (c) The Contractor shall ensure that any Service Charge Service (save for the provision of any personal heating and lighting or other housing benefit ineligible services) is a service the costs of which a Tenant on full Housing Benefit would be entitled to recover from the Authority as a result of the Tenant being on full Housing Benefit.
- (d) The Contractor shall comply, or shall ensure that the Landlord complies, with Good Industry Practice from time to time in relation to the determination of the Service Charge Services, the determination of Service Charges and the collection of Service Charges save in each case to the extent that such Good Industry Practice is not in accordance with the provisions of this Agreement.

33B.2 Service Charge

The Landlord shall be entitled to charge and retain a Service Charge from each Tenant with a Tenancy Agreement in respect of the Common Parts of an Apartment which benefits from one or more Service Charge Services (but no other person) subject to Service Charges not exceeding the Agreed Service Charge.

33B.3 Information

The Contractor shall procure that the Landlord shall maintain and supply to the Authority on request such information as is reasonably requested by the Authority from time to time to evidence that the Service Charge Services being delivered to Tenants and the Service Charges being charged to Tenants under their Tenancy Agreements accords with this clause 33B (Service Charges) and does not exceed the Agreed Service Charge. The Contractor shall keep the Authority the Authority up to date (or shall procure that the Authority is kept up to date) at all times of the Service Charges being charged by the Landlord to Tenants.

33B.4 Dispute

If the Authority, acting reasonably, considers that the Landlord is in breach of clauses 33B.1 (Service Charge Services) or 33B.2 (Service Charge) it shall advise the Contractor accordingly as soon as is reasonably practicable. The parties shall as soon as practicable thereafter discuss and agree the Service Charge Services and/or the level of Service Charge to be charged by the Landlord to the affected Tenants under their Tenancy Agreement to ensure compliance with the provisions of this clause 33B (Service Charges). In default of agreement the matter shall be determined by the Dispute Resolution Procedure.

33B.5 Rebate

Where it has been agreed or determined pursuant to clause 33B.4 (Dispute) that the Landlord has delivered Service Charge Services and/or charged a Service Charge to a Tenant in breach of clause 33B.1 (Service Charge Services) and/or clause 33B.2 (Service Charge) the Contractor shall procure that the Landlord shall reimburse the amount of any excess Service Charge charged to the Tenant concerned (and the Contractor shall procure that the terms of the Tenancy Agreement between each Tenant and the Landlord provide for such) save where a Tenant is entitled to receive housing benefit in relation to his tenancy, in which case the Contractor shall procure that the Landlord shall reimburse the excess Service Charge to the Authority up to the amount of the housing benefit to which the Tenant is entitled (or would be entitled based upon the Agreed Service Charge) and the Authority shall reimburse the Tenant the balance (if any) of any such excess.

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 2.5 of Schedule 4 (Payment Mechanism).

35 Best Value

35.1 Authority's Best Value Duty

35.1.1 The Contractor acknowledges that:

- (a) the Authority is subject to the Best Value Duty;
- (b) the provisions of this clause 35 (Best Value) are intended to assist the Authority in discharging its Best Value Duty in relation to the Services; and
- (c) the provisions of this clause 35.1 shall apply in respect of the obligations of the Contractor and the Authority 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 Authority shall reasonably request to enable the Authority to comply with Part 1 of the 1999 Act, including:

- (a) complying with requests for information, data or other assistance made by the Authority in pursuance of its Best Value Duty including to:
 - (i) NOT USED;
 - (ii) 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 Authority's compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;
 - (iii) facilitate the Authority preparing any statement in response to an Authority's auditor's report;
 - (iv) assist the Authority in relation to any action taken by the Secretary of State;
 - (v) NOT USED;
 - (vi) enable the Authority to produce and submit data listed in the Single Data List and to comply with any other data reporting requirements that may be prescribed by any Relevant Authority; and
 - (vii) complying with all requests by the Authority 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 Authority at which the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than four (4) in any one (1) Contract Year);
- (b) cooperating in audits and other Best Value Inspections;
- (c) permitting any Best Value Inspector, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
 - (i) the Apartment Areas;
 - (ii) any document or data relating to the Services; and
 - (iii) 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, the purpose of which shall include:

- (a) 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;
- (b) assisting in the preparation of the Contractor's Annual Service Report; and

(c) monitoring the compliance by the Contractor with the Output Specification;

(d) NOT USED,

and the Customer Satisfaction Survey shall be undertaken in accordance with the Output Specification.

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 Contract Year, at its own cost provide to the Authority 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 Authority promptly provide such written evidence or other supporting information as the Authority may reasonably require to verify and audit the information and other material contained in the Annual Service Report.

35.3.3 If, in the Authority's reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Service Report and the Best Value Duty, then the Authority may serve a Low Value Change Request or an Authority Change Notice (as the case may be) upon the Contractor stating the nature and timing of the changes to the provision, performance or delivery of the Services (or the relevant part) which the Authority desires, and the provisions of Schedule 25 (Change Protocol) shall apply.

35.3.4 NOT USED.

35.3.5 NOT USED.

35.3.6 NOT USED.

35.3.7 NOT USED.

35.3.8 NOT USED.

35.3.9 NOT USED.

35.3.10 The Contractor shall take all reasonable steps to mitigate any costs and maximise any savings arising as a consequence of a Low Value Change Request or an Authority Change Notice (as the case may be) issued pursuant to clause 35.3.3 above.

35.4 Not used.

PART 6 - TERMINATION

36 Direct Agreement

The provisions set out in this part 6 (Termination) of this Agreement are subject to the Direct Agreement.

37 Termination of this Agreement

37.1 Voluntary Termination by the Authority

37.1.1 The Authority may terminate this Agreement at any time on or before the Expiry Date by complying with its obligations under clause 37.1.2 (Voluntary Termination by the Authority) and 37.1.3 (Voluntary Termination by the Authority).

37.1.2 If the Authority wishes to terminate this Agreement under clause 37.1.1 (Voluntary Termination by the Authority) it must give notice to the Contractor stating:

- (a) that the Authority is terminating this Agreement under this clause 37.1 (Voluntary Termination by the Authority);
- (b) that this Agreement will terminate on the date specified in the Termination Notice, which must be a minimum of twenty (20) Business Days after the date of receipt of the notice; and
- (c) whether the Authority has exercised its Termination Option under clause 46 (Assets and Transition to the Authority or to Another Contractor).

37.1.3 NOT USED

37.1.4 This Agreement will terminate on the date specified in the Termination Notice referred to in clause 37.1.2(b) (Voluntary Termination by the Authority) above.

37.2 NOT USED

37.3 Termination on Authority Default

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

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

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

37.4 Termination on Contractor Default

Subject to clause 37.5 (Rectification of Contractor Default), the Authority shall be entitled to terminate this Agreement by notice in writing to the Contractor if a Contractor Default has occurred.

37.5 Rectification of Contractor Default

37.5.1 If a Contractor Default has occurred and the Authority wishes to terminate this Agreement, it must serve a Termination Notice on the Contractor.

37.5.2 The Termination Notice must specify:

- (a) the type and nature of Contractor Default that has occurred, giving reasonable details; and
- (b) whether the Authority has exercised its Termination Option under clause 46 (Assets and Transition to the Authority or to Another Contractor);
- (c) that in the case of any Contractor Default falling within limb (a), (g), (h), (i) or (p) of the definition of Contractor Default this Agreement will terminate on the day falling forty (40) Business Days after the date the Contractor received the Termination Notice unless:
 - (i) 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) Business Days after the date the Contractor receives the Termination Notice (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme); or
 - (ii) in the case of any Contractor Default falling within limbs (a), (g), (h), (i) or (p) of the definition of Contractor Default the Contractor rectifies the Contractor Default within forty (40) Business Days after the date on which the Contractor receives the Termination Notice; or
- (d) that in the case of any Contractor Default (not being limbs (a), (g), (h), (i) or (p)), this Agreement will terminate on the date falling twenty (20) Business 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:

- (a) in the case of a Contractor Default within paragraph (a) of the definition of Contractor Default, no acceptable rectification programme has been put forward pursuant to clause 37.5.2(c)(i) (Rectification of Contractor Default) and the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice; or
- (b) in the case of a Contractor Default within limb (g), (h), (i) or (p) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice,

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

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) Business Days after the date of notification by the Authority to the Contractor of such failure to implement the rectification programme in accordance with its terms.

37.6 Termination for Breach of Refinancing Provisions

37.6.1 If the Contractor wilfully breaches clause 80.1 (Requirement for Authority Consent) then the Authority 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 Authority decides to terminate the Agreement under clause 37.6.1 (Termination for Breach of Refinancing Provisions), it must give notice to the Contractor stating:

- (a) that the Authority is terminating the Agreement under clause 37.6.1 (Termination for Breach of Refinancing Provisions);
- (b) that this Agreement will terminate on the date falling twenty (20) Business Days after the date of receipt of the notice; and
- (c) whether the Authority has chosen to exercise its Termination Option under clause 46 (Assets and Transition to the Authority or to Another Contractor).

37.6.3 NOT USED

37.6.4 This Agreement shall terminate on the date falling twenty (20) Business 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

- (a) If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Authority shall be entitled to act in accordance with the provisions of this clause 37.7 (Termination for Corrupt Gifts and Fraud).
- (b) Notwithstanding sub-clauses 37.7.2(c) to 37.7.2(f) if a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate this Agreement by giving notice to the Contractor provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, the Authority may not terminate this Agreement unless, acting reasonably, it considers termination of this Agreement to be in the best interests of the Project.
- (c) If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and this Agreement will terminate, unless within

twenty (20) Business Days of receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the carrying out of such part of the Works and/or the performance of such part of the Services by another person.

- (d) If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor then the Authority may give notice to the Contractor of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Contractor terminates the relevant Project Document and procures the carrying out of such part of the Works and/or the performance of such part of the Services by another person provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, the Authority may not terminate this Agreement unless, acting reasonably, it considers termination of this Agreement to be in the best interests of the Project.
- (e) If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the carrying out of such part of the Works and/or the performance of such part of the Services by another person.
- (f) If the Prohibited Act is committed by any other person not specified in clauses 37.7.2(b) to 37.7.2(d), then the Authority may give notice to the Contractor of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the carrying out of such part of the Works and/or the performance of such part of the Services by another person provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, the Authority may not terminate this Agreement unless, acting reasonably, it considers termination of this Agreement to be in the best interests of the Project.
- (g) Any notice of termination under this clause 37.7 (Termination for Corrupt Gifts and Fraud) shall specify:
 - (i) the nature of the Prohibited Act;
 - (ii) the identity of the party whom the Authority believes has committed the Prohibited Act;
 - (iii) the date on which this Agreement will terminate, in accordance with the applicable provision of this clause;
 - (iv) the Authority's chosen option under clause 49 (Method of Payment); and
 - (v) whether the Authority has exercised its Termination Option under clause 46 (Assets and Transition to the Authority or to Another Contractor).

38 Termination for Persistent Breach by the Contractor

38.1 Warning Notice

If a particular breach, other than any breach for which Performance Deductions could have been awarded and/or Unavailability Deductions could have been made, has continued for more than fourteen (14) days or occurred more than three (3) times in any six (6) month period then the Authority 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 in three (3) or more months within the six (6) month period after the date of service of the warning notice, then the Authority may serve another notice (**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 (12) 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 fourteen (14) days or recurs in three (3) 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 the Affected Party is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt, the Authority shall not be entitled to terminate this Agreement for 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 4 (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) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Agreement for a period of more than one hundred and twenty (120) Business Days, then, subject to clause 39.6 (Consequences of Termination), either party may terminate this Agreement by giving thirty (30) Business Days' written notice to the other party.

39.6 **Consequences of Termination**

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 Authority in accordance with clause 42 (Compensation on Termination for Force Majeure).

39.7 **Notice to Continue**

If the Contractor gives notice to the Authority under clause 39.5 (Failure to Agree) that it wishes to terminate this Agreement, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this Agreement to continue. If the Authority gives the Contractor such notice, then:

39.7.1 the Authority shall pay to the Contractor the Unitary Charge from the day after the date on which this Agreement would have terminated under clause 39.5 (Failure to Agree) as if the Services were being fully provided; and

39.7.2 this Agreement will not terminate until expiry of written notice (of at least thirty (30) Business Days) from the Authority 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 Authority), the provisions of clause 44 (Compensation on Termination for Authority Default/Voluntary Termination) shall apply;

40.1.2 **NOT USED**

40.1.3 Clause 37.3 (Termination on Authority Default), the provisions of clause 44 (Compensation on Termination for Authority Default/Voluntary Termination) shall apply; or

40.1.4 Clause 37.4 (Termination on Contractor Default), the provisions of clause 43 (Compensation on Termination for Contractor Default) shall apply;

40.1.5 Clause 37.6 (Termination for Breach of Refinancing Provisions), the provisions of clause 45 (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches) shall apply;

40.1.6 Clause 37.7 (Termination for Corrupt Gifts and Fraud), the provisions of clause 45 (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches) shall apply;

40.1.7 Clause 78.3 (Failure to Issue a Certificate) the provisions of clause 44 (Compensation on Termination for Authority Default/Voluntary Termination) shall apply

40.1.8 Clause 39 (Termination on Force Majeure), the provisions of clause 42 (Compensation on Termination for Force Majeure) shall apply;

40.1.9 Clause 59 (Risks that become Uninsurable), the provisions of clause 42 (Compensation on Termination for Force Majeure) 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 81 (Sole Remedy and Common Law Rights):

- (a) termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement prior to termination; and
- (b) termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Authority under clause 8 (Nature of Land Interests), clause 29 (TUPE and Employees), clause 30 (Pensions), clause 33 (Payment Provisions), part 7 (Compensation on Termination), clause 55 (Freedom of Information and Confidentiality), clause 56 (Indemnities Guarantees and Contractual Claims), clause 56.9 (Mitigation), clause 58 (Reinstatement and Change of Requirement after Insured Event), clause 59 (Risks that become Uninsurable), clause 60 (Dispute Resolution), clause 62 (Intellectual Property), clause 69 (Notices), clause 74 (Contractor's Records), clause 79 (Governing Law and Jurisdiction) and clause 83 (Capacity) or under any other provision of this Agreement which is expressed to survive termination or which is 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 the Retention Fund

41.1 Final Survey

Where the Authority has served an Expiry Option Notice on the Contractor then nine (9) months prior to the Expiry Date, the Authority shall be entitled to carry out a final survey of the Apartment Areas 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 Authority shall notify the Contractor in writing a minimum of five (5) Business Days in advance of the date it wishes to carry out or procure the carrying out of the final survey. The Authority shall consider in good faith any reasonable request by the Contractor for the final survey to be carried out on a different date if such request is made at least two (2) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Contractor's ability to provide the Services.

41.3 Minimisation of Disruption

When carrying out the final survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The Contractor shall afford the Authority or any person carrying out the survey (free of charge) any reasonable assistance required by the Authority during the carrying out of the final survey. The cost of the final survey shall be borne by the Authority.

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 Authority shall:

- 41.4.1 notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the Apartment Areas 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 rectification and/or maintenance 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 Net Monthly Payment.

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 six (6) months prior to the Expiry Date the Authority shall (to the extent the outstanding works have not been carried out by the Contractor in the interim) deduct the costs of that work as quantified by the survey referred to in clause 41.1 (Final Survey) from the next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary) of Net Monthly Payment and pay such amount into an interest bearing account (the 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 Authority's reasonable satisfaction within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

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 Authority, to the extent that then or subsequently there are funds standing to the credit of the Retention Fund Account, shall reimburse the Contractor's costs of so doing by withdrawing amounts from the Retention Fund Account and paying these to the Contractor. If the aggregate of the amounts from time to time paid into the Retention Fund Account are insufficient to cover the Contractor's costs the Contractor shall bear the balance of such costs itself.

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 Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Contractor's expense and shall make withdrawals from the Retention Fund Account or, where there is insufficient funds in the Retention Fund Account, make subject to clause 33.9 (Rights of Set Off) deductions from the Net Monthly Payment to pay for such rectification and/or maintenance work or recover such amounts 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 Authority or the person the Authority 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,

then the Authority shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable.

PART 7 - COMPENSATION ON TERMINATION

42 Compensation on Termination for Force Majeure

42.1 Force Majeure Termination Sum

On termination of this Agreement under clause 39.5 (Failure to Agree), or clause 59.3.1(b) (Consequences) the Authority shall pay to the Contractor the Force Majeure Termination Sum in accordance with clauses 48 (Miscellaneous Compensation Provisions) and 49 (Method of Payment). Subject to clause 42.2 (Adjustment of Compensation Amount) the Force Majeure Termination Sum shall be the amount equal to the aggregate of:

42.1.1 where the Authority has exercised its Termination Option:

- (a) the Base Senior Debt Termination Amount;
- (b) the Junior Debt, less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements;
- (c) all amounts paid to the Contractor by way of subscription for shares in the capital of the Contractor less dividends and other distributions paid to the shareholders of the Contractor (save to the extent deducted under clause 42.1.1(b) (Force Majeure Termination Sum));
- (d) 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
- (e) the Lender RV Element; and
- (f) the Contractor's Residual Value Overage Share; or

42.1.2 where the Authority has not exercised its Termination Option:

- (a) the Base Senior Debt Termination Amount;
- (b) an amount that is [REDACTED] of the Junior Debt, less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements;
- (c) an amount that is [REDACTED] of all amounts paid to the Contractor by way of subscription for shares in the capital of the Contractor less dividends and other distributions paid to the shareholders of the Contractor (save to the extent deducted under clause 42.1.2(b));
- (d) 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;
- (e) deducting from the amounts in clauses 42.1.2(b) and (c) the Authority's Residual Value Overage Share.

42.2 Adjustment of Compensation Amount

42.2.1 If:

- (a) the aggregate of the amounts referred to in clauses 42.1.1(a), 42.1.1(b), 42.1.1(c), 42.1.1(e) and 42.1.1(f) (Force Majeure Termination Sum) is less than the Revised Senior Debt Termination Amount and the Lender RV Element, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount, the Lender RV Element and the amount referred to in clause 42.1.1(d) (Force Majeure Termination Sum); or
- (b) the aggregate of the amounts referred to in clauses 42.1.2(a), 42.1.2(b) and 42.1.2(c) (subject to any deduction made under clause 42.1.2(e)) (Force Majeure Termination Sum) 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 42.1.2(d) (Force Majeure Termination Sum),

provided always in either case that:

- (i) the amount referred to in clause 42.1.1(d) or clause 42.1.2(d) (as the case may be) (Force Majeure Termination Sum) shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and
- (ii) 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 referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount and the Lender RV Element, if clause 42.1.1 (Force Majeure Termination Sum) applies and if clause 42.1.2 (Force Majeure Termination Sum) applies shall never 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 Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this clause 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 never be less than the Revised Senior Debt Termination Amount and the Lender RV Element if clause 42.1.1 (Force Majeure Termination Sum) applies and if clause 42.1.2 (Force Majeure Termination Sum) applies shall never be less than the Revised Senior Debt Termination Amount.

42.2.4 Such amount shall be determined and paid in accordance with clauses 48 (Miscellaneous Compensation Provisions) and 49 (Method of Payment).

42.3 Amounts less than Zero

If the amounts referred to in clauses 42.1.1(b) and/or 42.1.1(c) (Force Majeure Termination Sum) or clauses 42.1.2(b) and/or 42.1.2(c) (net of any deduction made under clause 42.1.2(e)) (Force Majeure Termination Sum)) are less than zero then, for the purposes of the calculation in clause 42.1.1 (Force Majeure Termination Sum) or clause 42.1.2 (Force Majeure Termination Sum), they shall be deemed to be zero.

42.4 Assets

42.4.1 Where the Authority has exercised its Termination Option the Contractor shall transfer its right, title and interest in and to the Assets at the time set out in and as provided for in clause 46.1 (Assets and Transition to the Authority or to Another Contractor).

42.4.2 Where the Authority has not exercised its Termination Option the Contractor shall be entitled to retain its right, title and interest in and to the Assets in respect of Sites where Leases have been granted and the Authority shall be entitled to retain or to have transferred to it by the Contractor all right, title and interest in and to the Assets in respect of Sites where Leases have not been granted at the time set out in and as provided for in clause 46.1 (Assets and Transition to the Authority or to Another Contractor).

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 clause 43.1.2 (Retendering Election), the Authority shall be entitled to:

- (a) retender the provision of the Project in accordance with clause 43.2 (Retendering Election); or
- (b) require an expert determination in accordance with clause 43.3 (No Retendering Procedure).

43.1.2 The Authority shall be entitled to retender the provision of the Project in accordance with clause 43.2 (Retendering Election) if:

- (a) the Authority has exercised its Termination Option and notifies the Contractor on or before the date falling twenty (20) Business Days after the Termination Date that it intends to retender; and

- (b) there is a Liquid Market, and either:
 - (i) the Senior Lenders have not exercised its rights to step-in under clause 6 of the Direct Agreement; or
 - (ii) the Contractor or Senior Lenders have not procured the transfer of the Contractor's rights and liabilities under this Agreement to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so,

but otherwise the Authority shall not be entitled to re-tender the provision of the Project and clause 43.3 (No Retendering Procedure) shall apply.

43.2 Retendering Procedure

If the Authority elects to retender the provision of the Project under clause 43.1 (Retendering Election), then the following provisions shall apply:

- 43.2.1 The Contractor shall transfer its right, title and interest in and to the Assets at the time set out in and as provided for in clause 46.1 (Assets and Transition to the Authority or to Another Contractor).
- 43.2.2 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.
- 43.2.3 The Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable.
- 43.2.4 The Authority shall notify the Contractor of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, but shall act reasonably in setting such requirements and terms.
- 43.2.5 The Contractor authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under clause 55 (Freedom of Information and Confidentiality) that is reasonably required as part of the Tender Process.
- 43.2.6 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 Lenders on the Authority's compliance with the Tender Process and making representations to the Authority. The Tender Process Monitor will not disclose any confidential information to the Contractor or any other person (and shall provide an undertaking to the Authority to such effect as a condition of its appointment) but shall be entitled to advise the Contractor as to whether it considers that the Authority has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price.
- 43.2.7 The Tender Process Monitor shall enter into a confidentiality agreement with the Authority in a form acceptable to the Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Authority regarding compliance with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Authority shall not be bound to consider or act upon such representations but

acknowledges that such representations may be referred to by the Contractor in the event that the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with clause 60 (Dispute Resolution).

43.2.8 For all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the Authority shall pay to the Contractor:

- (a) the Post Termination Service Amount for that month, on or before the date falling 10 Business Days after the end of that month; and
- (b) the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling twenty (20) Business Days after the Compensation Date.

43.2.9 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.

43.2.10 The Authority shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies and amounts (if any) standing to the credit of the Joint Insurance Account on the date that the New Contract is entered into.

43.2.11 As soon as practicable after tenders have been received, the Authority shall (acting reasonably) determine the Compliant Tenders and shall notify the Contractor of the Adjusted Highest Compliant Tender Price.

43.2.12 If the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with clause 60 (Dispute Resolution) the Authority shall be entitled to enter into a New Contract. The Authority shall pay to the Contractor the Adjusted Highest Compliant Tender Price on or before the date falling twenty (20) Business Days after it has been determined in accordance with clause 60 (Dispute Resolution) and the Authority shall pay interest to the Contractor at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which had been withheld, from the date specified in clause 43.2.13 (Retendering Procedure) until the date specified in this clause 43.2.12 (Retendering Procedure). For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price the Authority shall (where it is agreed that the Adjusted Highest Compliant Tender Price is a positive number) pay to the Contractor the agreed amount no later than the date specified in clause 43.2.13 (Retendering Procedure), with the disputed amount being dealt with in accordance with this clause 43.2.12.

43.2.13 Subject to clauses 43.2.12 (Retendering Procedure) and 43.2.16 (Retendering Procedure), the Authority shall pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Business Days after the date of the New Contract.

43.2.14 The discharge by the Authority of its payment obligation in clauses 43.2.10 (Retendering Procedure) and/or 43.2.11 (Retendering Procedure) shall be in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Agreement and the Project Documents whether

under contract, tort, restitution or otherwise, save for any liability of the Authority which arose prior to the Termination Date that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.

43.2.15 Subject to clauses 43.2.17 (Retendering Procedure) and 43.2.19 (Retendering Procedure), if the Authority has not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Contractor on or before the date falling two (2) years after the Termination Date then the following provisions of this clause 43.2 (Retendering Procedure) shall not apply to that termination and the provisions of clause 43.3 (No Retendering Procedure) shall apply instead.

43.2.16 If the Adjusted Highest Compliant Tender Price is zero or a negative number then the Authority shall have no obligation to make any payment to the Contractor and with effect from the time that the Authority gives notice of that event to the Contractor, the Authority shall be released from all liability to the Contractor for breaches and/or termination of this Agreement and any other Project Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Authority which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.

43.2.17 If the Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Contractor to the Authority on the date of the New Contract.

43.2.18 The Authority 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.

43.2.19 If the Authority has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify the Contractor of this decision and pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price within twenty (20) Business Days of such notification.

43.3 No Retendering Procedure

If either the Authority is not entitled to retender the provision of the Project under clause 43.1.2 (Retendering Election) or the Authority 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 Authority 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 Authority 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 it shall always be assumed that the Right To Buy and the Preserved Right To Buy in respect of any Apartment has not arisen as a consequence of the Authority exercising its

Termination Option and if such rights have arisen or been exercised in respect of any Apartment the direct impact of such rights and/or the exercise of such rights (as relevant) on the Estimated Fair Value of the Contract shall be disregarded the parties shall be obliged to follow the principles set out below:

- (a) where the Authority has exercised its Termination Option:
- (i) all forecast amounts should be calculated in nominal terms at current prices using the indexation formula in paragraph 2.5 of Schedule 4 (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 assured forecast rate of increase in the index RPIX (as set out in the Base Case) in applying the formula;
 - (ii) 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;
 - (iii) the total of all future forecasted Rents and Service Charges to be received by the Contractor and the Landlord to the Expiry Date (less a reasonable amount to cover bad debts) shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate and added to the payment calculated pursuant to clause 43.3.3(a)(ii) (No Retendering Procedure);
 - (iv) the total of all costs forecast to be incurred by the Authority and the Landlord as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payments calculated pursuant to clause 43.3.3(a)(ii) and 43.3.3(a)(iii) (No Retendering Procedure), such costs to include (without double counting):
 - A) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;
 - B) the costs of the Services forecast to be incurred by the Authority and the Landlord in providing the Project to the standard required; and
 - C) any rectification costs required to deliver the Project to the standard required (including any costs forecast to be incurred by the Authority and the Landlord 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 would have delivered the full Unitary Charge referred to in clause 43.3.3(a)(ii) (No Retendering Procedure) had the Project continued to the Expiry Date; and

- (v) the lower of:
 - A) the EUV-SH of the Leases but (for the purposes of this clause only) on the assumption that any income or costs relating to the relevant Leases up to the Expiry Date that would normally be taken into account in determining the EUV-SH of the Leases are disregarded; and
 - B) the Contractor Default Residual Value Sum,

shall be included in the Estimated Fair Value of the Contract to be paid by the Authority to the Contractor and added to the amount produced by the operation of clauses 43.3.3(a)(ii) to 43.3.3(a)(iv) (No Retendering Procedure) above;

- (b) where the Authority has not exercised its Termination Option:
 - (i) all forecast amounts should be calculated in nominal terms at current prices, using the indexation formula in paragraph 2.5 of Schedule 4 (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 index RPIX (as set out in the Base Case) in applying the formula;
 - (ii) 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;
 - (iii) the total of all future forecasted Rents and Service Charges to be received by the Landlord to the Expiry Date (less a reasonable amount to cover bad debts) shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate and added to the payment calculated pursuant to clause 43.3.3(b)(ii) (No Retendering Procedure);
 - (iv) the total of all costs forecast to be incurred by the Authority and the Landlord (and in the case of limbs 43.3.3(b)(iv)B) and 43.3.3(b)(iv)C) below, the Contractor) as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payments calculated pursuant to clauses 43.3.3(b)(ii) and 43.3.3(b)(iii) (No Retendering Procedure), such costs to include (without double counting):
 - A) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;
 - B) the costs of the Services forecast to be incurred by the Authority, the Contractor and the Landlord in providing the Project to the standard required; and
 - C) any rectification costs required to deliver the Project to the standard required (including any costs forecast to be incurred by the Authority, the Contractor and the Landlord 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 would have delivered the full Unitary Charge referred to in clause 43.3.3(b)(ii) (No Retendering Procedure) had the Project continued to the Expiry Date;

- (v) the EUV-SH of the Leases but (for the purposes of this clause only) on the assumption that the term of years of the relevant Leases expire on the Expiry Date without any liability for dilapidations shall be calculated and deducted from the payments calculated pursuant to clauses 43.3.3(b)(ii) to 43.3.3(b)(iv) (No Retendering Procedure); and
- (vi) the Authority's Residual Value Overage Share shall be calculated and deducted from the payments calculated pursuant to clauses 43.3.3(b)(ii) to 43.3.3(b)(v) (No Retendering Procedure).

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) Business Days after the date on which the Authority elected to require an expert determination in accordance with this clause 43.3 (No Retendering Procedure), then the Adjusted 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 Authority shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of the Contract on the date falling forty (40) Business Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this clause 43.3 (No Retendering Procedure).

43.3.6 The discharge by the Authority 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 Authority for breaches and/or termination of this Agreement or other Project Document whether in contract, tort, restitution or otherwise, save for any liability that arose prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of the Contract.

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 Authority on the Compensation Date.

43.3.8 Where the Authority has exercised its Termination Option, the Contractor shall transfer its right, title and interest in and to the Assets at the time set out in and as provided for in clause 46.1 (Assets and Transition to the Authority or to Another Contractor). Where the Authority has not exercised its Termination Option the Contractor shall be entitled to retain its right, title and interest in and to the Assets in respect of Sites where Leases have been granted and the Authority shall be entitled to retain or to have transferred to it by the Contractor all right, title and interest in and to the Assets in respect of Sites where Leases have not been granted at the time set out in and as provided for in clause 46.1 (Assets and Transition to the Authority or to Another Contractor).

44 Compensation on Termination for Authority Default/Voluntary Termination

44.1 Authority Default Termination Sum

On termination of this Agreement pursuant to clauses 37.1 (Voluntary Termination by the Authority) or 37.3 (Termination on Authority Default) or in the circumstances set out in clause 78 (Local Government (Contracts) Act 1997) the Authority shall pay the Contractor the Authority Default Termination Sum in accordance with clauses 48 (Miscellaneous Compensation Provisions) and 49 (Method of Payment) on the Termination Date. Subject to clause 44.3 (Adjustment of Compensation Amount), the Authority Default Termination Sum shall be an amount equal to the aggregate of:

44.1.1 Where the Authority has exercised its Termination Option:

- (a) the Base Senior Debt Termination Amount;
- (b) 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;
- (c) all amounts shown in the Base Case as payable by the Contractor from the Termination Date, either in dividends or other distributions on the share capital of the Contractor or as payments of interest or repayments of principal made by the Contractor under the Subordinated Financing Agreements, each amount discounted back at the Base Case Equity IRR from the date on which it is shown to be payable in the Base Case to the Termination Date;
- (d) the Lender RV Element; and
- (e) the Contractor's Residual Value Overage Share; or

44.1.2 Where the Authority has not exercised its Termination Option:

- (a) the Base Senior Debt Termination Amount;
 - (b) 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;
 - (c) an amount which [REDACTED] of all amounts shown in the Base Case as payable by the Contractor from the Termination Date, either in dividends or other distributions on the share capital of the Contractor or as payments of interest or repayments of principal made by the Contractor under the Subordinated Financing Agreements, each amount discounted back at the Base Case Equity IRR from the date on which it is shown to be payable in the Base Case to the Termination Date; and
 - (d) any Completion Costs
- less
- (e) the Authority's Residual Value Overage Share;

44.2 Assets

44.2.1 Where the Authority has exercised its Termination Option the Contractor shall transfer its right, title and interest in and to the Assets at the time set out in and as provided for in clause 46.1 (Assets and Transition to the Authority or to Another Contractor).

44.2.2 Where the Authority has not exercised its Termination Option the Contractor shall be entitled to retain its right, title and interest in and to the Assets in respect of Sites where Leases have been granted and the Authority shall be entitled to retain or to have transferred to it by the Contractor all right, title and interest in and to the Assets in respect of Sites where leases have not been granted at the time set out in and as provided for in clause 46.1 (Assets).

44.3 **Adjustment of Compensation Amount**

44.3.1 If:

(a) the aggregate of the amounts referred to in clauses 44.1.1(a), 44.1.1(c), 44.1.1(d) and 44.1.1(e) (Authority Default Termination Sum) is less than the Revised Senior Debt Termination Amount and the Lender RV Element, then the Authority Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount, the Lender RV Element and the amount referred to in clause 44.1.1(b) (Authority Default Termination Sum); or

(b) the aggregate of the amounts referred to in clauses 44.1.2(a) and 44.1.2(c) (Authority Default Termination Sum) less the Authority's Residual Value Overage Share) is less than the Revised Senior Debt Termination Amount plus the Completion Costs then the Authority Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount plus the Completion Costs and the amount referred to in clause 44.1.2(b) (Authority Default Termination Sum),

provided always in either case that:

(i) the amount referred to in clause 44.1.1(b) (Authority Default Termination Sum) or clause 44.1.2(b) (Authority Default Termination Sum) (as the case may be) shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and

(ii) 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.

44.3.2 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under clause 11.4.4(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 Authority shall be entitled to set off the value of that Distribution a second time against the Authority Default Termination Sum, provided that the amount of the Authority Default Termination Sum will never be less

than the Revised Senior Debt Termination Amount and the Lender RV Element if clause 44.1.1 (Authority Default Termination Sum) applies and if clause 44.1.2 (Authority Default Termination Sum) applies shall never be less than the Revised Senior Debt Termination Amount plus the Completion Costs.

44.3.3 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 Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this clause 44.1 (Compensation on Termination for Authority Default/Voluntary Termination), then the Authority Default 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 Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount and the Lender RV Element if clause 44.1.1 (Authority Default Termination Sum) applies and if clause 44.1.2 (Authority Default Termination Sum) applies shall never be less than the Revised Senior Debt Termination Amount plus the Completion Costs.

45 Compensation on Corrupt Gifts, Fraud and Refinancing Breaches

45.1 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), then the Authority shall pay to the Contractor:

45.1.1 where the Authority has exercised its Termination Option an amount equal to:

- (a) the Revised Senior Debt Termination Amount; and
- (b) the lower of the EUV-SH of the Leases and the Lender RV Element

45.1.2 where the Authority has not exercised its Termination Option an amount equal to:

- (a) the Revised Senior Debt Termination Amount;
less
- (b) the Authority's Residual Value Overage Share,

such amount shall be determined and paid in accordance with clauses 48 (Miscellaneous Compensation Provisions) and 49 (Method of Payment).

45.2 Where the Authority has exercised its Termination Option the Contractor shall transfer its right, title and interest in and to the Assets at the time set out in and as provided for in clause 46.1 (Assets and Transition to the Authority or to Another Contractor).

45.3 Where the Authority has not exercised its Termination Option the Contractor shall be entitled to retain its right, title and interest in and to the Assets in respect of Sites where Leases have been granted and the Authority shall be entitled to retain or to have transferred to it by the Contractor all right, title and interest in and to the Assets in respect of Sites where Leases have not been granted at the time set out in and as provided for in clause 46.1 (Assets and Transition to the Authority or to Another Contractor).

46 Assets and Transition to the Authority or to Another Contractor

46.1 Assets

46.1.1 If termination of this Agreement occurs for whatever reason (including pursuant to clause 78 (Local Government (Contracts) Act 1997) and Schedule 10 (Relevant Discharge Terms) then the Authority shall have the option to require the Contractor to:

- (a) in respect of all Sites where a Lease has not been granted by the Authority, transfer with effect from the Termination Date its right, title and interest in and to the Assets to the Authority or to another contractor as the Authority directs at no cost to the Authority; and
- (b) in respect of all Sites where a Lease has been granted by the Authority, transfer with effect from the Termination Date its rights, title and interest in and to the Assets to the Authority or to such other contractor as shall be notified by the Authority to the Contractor and in respect of all of the Leases at the direction of the Authority, either:
 - (i) assign, with effect from the Termination Date, its unencumbered interest in each Lease (subject only to such Tenancy Agreements as have been granted out of each Lease) to the Authority or to such assignee as shall be notified by the Authority to the Contractor by delivering to the Authority within ten (10) Business Days of such notice a duly executed transfer or deed of assignment in such form as the Authority shall require and the Contractor shall agree (each acting reasonably) together with all relevant title documents and releases from any charge; or
 - (ii) surrender, with effect from the Termination Date, its interest in each Lease by delivering to the Authority, within ten (10) Business Days of such notice, a duly executed transfer or deed of surrender in such form as the Authority shall require and the Contractor shall agree (each acting reasonably) together with all relevant title documents, releases or discharges and a direction to the Land Registrar to cancel the registered titles relating to all of the Leases,

clauses 46.1.1(a) and 46.1.1(b) together being the **Termination Option**. The Authority shall not be entitled to exercise the Termination Option pursuant to this clause 46.1 (Assets and Transition to the Authority or to Another Contractor) other than in respect of all of the Sites and all of the Apartment Areas.

The Termination Option may only be exercised by the Authority notifying the Contractor in a Termination Notice or, where the Termination Notice is served by the Contractor within twenty (20) Business Days of receipt by the Authority of such Termination Notice, or in the case of termination pursuant to clause 78 (Local Government (Contracts) Act 1997) and Schedule 10 (Relevant Discharge Terms), within twenty (20) Business Days of the making of a determination or order by a court of final jurisdiction, the result of which is that this Agreement does not have effect or is otherwise unenforceable in each case by serving a notice on the Contractor to that effect.

46.1.2 Where this Agreement expires due to effluxion of time then the Authority shall have the option in consideration of the payment to the Contractor by the Authority of the EUV-SH of the Leases (less the Authority's Residual Value Overage Share) in a lump sum on the Expiry Date or (if later) within forty (40) Business Days after determination of the EUV-SH of the Leases in accordance with clause 46A (EUV-SH of the Leases) to require the Contractor to transfer with effect from the Expiry Date its rights, title and interest in and to all the Assets (excluding the Leases) to the Authority or to such other assignee as shall be notified by the Authority to the Contractor and in respect of all of the Leases, at the direction of the Authority, either:

- (a) assign, with effect from the Expiry Date, its unencumbered interest in each Lease (subject only to such Tenancy Agreements as have been granted out of each Lease) to the Authority or to such assignee as shall be notified by the Authority to the Contractor by delivering to the Authority within ten (10) Business Days of such notice a duly executed transfer or deed of assignment in such form as the Authority shall require and the Contractor shall agree (each acting reasonably) together with all relevant title documents and releases from any charge; or
- (b) surrender, with effect from the Expiry Date, its interest in each Lease by delivering to the Authority, within ten (10) Business Days of such notice, a duly executed transfer or deed of surrender in such form as the Authority shall require and the Contractor shall agree (each acting reasonably) together with all relevant title documents, releases or discharges and a direction to the Land Registrar to cancel the registered titles relating to all of the Leases,

clauses 46.1.2(a) and 46.1.2(b) together being the **Expiry Option**. The Authority shall not be entitled to exercise the Expiry Option pursuant to this clause 46.1 (Assets and Transition to the Authority or to Another Contractor) other than in respect of all Sites and all of the Apartment Areas. The Expiry Option may only be exercised by the Authority notifying the Contractor not less than nine (9) Months prior to the Expiry Date by serving a notice on the Contractor to that effect (**Expiry Option Notice**).

46.1.3 Where the Authority does not exercise the Termination Option the Contractor shall procure that all Assets relating to Sites where a Lease has not been granted shall be transferred to the Authority within ten (10) Business Days of written demand to that effect.

46.1.4 Where the Authority does not exercise the Expiry Option the Contractor shall pay to the Authority the Authority's Residual Value Overage Share at the Expiry Date.

46.2 **NOT USED**

46.3 **NOT USED**

46.4 **Compliance and duty to co-operate**

If the Authority exercises the Termination Option or the Expiry Option

46.4.1 the Contractor shall comply with the Authority's reasonable directions regarding the Assets (which directions shall in the case of the Leases comply with the provisions of clause 46.1 (Assets) as set out in the Termination Notice or the Expiry Option Notice (as the case may be) and shall carry out all necessary acts (including entering into

any contracts) at its own cost to ensure that its rights, title and interest in and to the Assets are transferred, assigned or surrendered to the Authority or to another entity at the time and as provided for in clause 46.1 (Assets and Transition to the Authority or to Another Contractor).

46.4.2 during the period of any Termination Notice in the case of the Termination Option and during the final nine (9) months of the Contract Period in the case of the Expiry Option, and in each case for a period of three (3) months thereafter, the Contractor shall co-operate fully with the transfer of responsibility for Services (or any of the Works and/or Services) to the Authority or to such other contractor, of such works and/or services the same or similar to the Works and/or Services and as the case may require with the transfer of responsibility for the Tenants, and for the purposes of this clause 46.4.2 the meaning of the term “co-operate” shall include:

- (a) liaising with the Authority and/or any such contractor, and providing reasonable assistance and advice concerning the relevant Works and/or Services and their transfer to the Authority or to such other contractor;
- (b) allowing the Authority or such other contractor access (at reasonable times and on reasonable notice) to the relevant Sites and Apartment Areas but not so as to interfere with or impede the provision of the Works and/or Services;
- (c) without prejudice to the obligations of the Contractor pursuant to clause 31.10 (Operating Manual)) providing to the Authority and/or to such other contractor all and any information concerning the relevant Apartment Areas, Sites, Works and/or the Services and the Tenants and Tenancy Agreements which is reasonably required for the efficient transfer of responsibility for their performance; and
- (d) doing all necessary acts (including entering into any contracts) to ensure that the Authority and/or such other contractor obtains all of its rights, title and interest in and to the Assets with effect on and from the Expiry Date.

46.5 **Transfer of Responsibility**

The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of such responsibility 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.

46A **EUV-SH of the Leases**

46A.1 Following notification by the Authority pursuant to clause 46.1 (Assets and Transition to the Authority or to Another Contractor) of its intention whether or not to exercise its Termination Option or the Expiry Option, the parties shall seek to agree the EUV-SH of the Leases and in default of agreement within fifteen (15) Business Days of the Estimate Date then the EUV-SH of the Leases shall be determined in accordance with clause 46A.2 (EUV-SH of the Leases) below. The **Estimate Date** shall be:

46A.1.1 in the case of the Termination Option, the Termination Date;

46A.1.2 in the case of the Expiry Option, the date that is one Contract Month prior to the Expiry Date; or

46A.1.3 in the case of termination pursuant to clause 78 (Local Government (Contracts) Act 1997) and Schedule 10 (Relevant Discharge Terms), the date of the making of a determination or order by a court of final jurisdiction, the result of which is that this Agreement does not have effect or is otherwise unenforceable.

46A.2 In the event that the parties fail to agree the EUV-SH of the Leases pursuant to clause 46A.1 (EUV-SH of the Leases) then the EUV-SH of the Leases shall be referred for determination at the request of either party to an independent surveyor agreed upon by the parties or in default of agreement by an independent surveyor nominated by the President for the time being of the Royal Institution of Chartered Surveyors whose costs shall be paid as he shall direct. The independent surveyor's decision on the EUV-SH of the Leases shall be final and binding (save in the case of fraud or manifest error).

46A.3 For the purpose of calculating EUV-SH of the Leases any Lease which is to be granted after the Termination Date as a result of the operation of clause 40.3.1(b) (Continuing Obligations) shall be treated as having been granted on the Termination Date.

47 Project Documents and Financing Agreements

47.1 Delivery of Initial and Changed Project Documents and Financing Agreements

47.1.1 The Contractor has provided to the Authority copies of the Project Documents (as listed in Schedule 14 (Project Documents)) and of the Initial Financing Agreements (as listed in parts 1 and 2 of Schedule 13 (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 clause 1.1 (Definitions), if at any time an amendment is made to any Project Document or Financing Agreement, or the Contractor enters into a new Project Document or Financing Agreement (or any agreement which affects the interpretation or application of any Project Document or Financing Agreement), the Contractor shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Contractor.

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 of 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 departs from its obligations (or waives or allows 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 Authority for review pursuant to the Review Procedure and there has been no objection made by the Authority in accordance with paragraph 3 of the Review Procedure within twenty (20) Business Days (or such shorter period as may be agreed by the parties) of receipt by the Authority of the submission of the proposed course of action (and relevant documentation) and provided, in the circumstances specified in clause 47.2.1, that the Contractor has complied with the provisions of clause 63 (Assignment and Sub-Contracting).

47.3 Changes to Financing Agreements

47.3.1 Without prejudice to the provisions of clause 47.1 (Delivery of Initial and Changed Project Documents and Financing Agreements) and clause 80 (Refinancing), the Contractor shall not, without the prior written consent of the Authority, enter into new Financing Agreements or terminate, amend, waive its rights or otherwise deal with its Financing Agreements if the same may reasonably be expected to have a material adverse effect on the ability of the Contractor to perform its obligations under the Project Documents or this Agreement.

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 Authority's liabilities on early termination of this Agreement unless:

- (a) the Contractor has obtained the prior written consent of the Authority to such increased liability for the purposes of this clause 47.3.2 (Changes to Financing Agreements); or
- (b) it is a Permitted Borrowing.

In the event of any conflict between the provisions of this clause 47.3 (Changes to Financing Agreements) and any other provisions of this Agreement, the provisions of this clause 47.3 (Changes to Financing Agreements) 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 Authority under clauses 42 (Compensation on Termination for Force Majeure), 44 (Compensation on Termination for Authority Default/Voluntary Termination) 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 Authority shall pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.

48.2 Set Off on Termination

Except where expressly stated otherwise, the Authority is not entitled to set off any amount against any payment of termination compensation (whether payable as a lump sum or instalments) under clauses 42 (Compensation on Termination for Force Majeure), 44

(Compensation on Termination for Authority Default/Voluntary Termination) and 45 (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches), 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 the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount as the case may be at that time. For the avoidance of doubt, for the purposes of this clause 48.2 (Set Off on Termination) where the Authority has exercised its Termination Option reference to Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount shall be deemed to include the Lender RV Element and where the Authority has not exercised its Termination Option reference to Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount shall be deemed to exclude the Lender RV Element but include (where relevant) the Completion Costs.

48.3 Exclusivity of Remedy

Any and all sums irrevocably paid by the Authority to the Contractor shall be in full and final settlement of each party's rights and claims against each other for breaches and/or termination of this Agreement or any Project Document whether under contract, tort, restitution or otherwise, but without prejudice to:

48.3.1 any antecedent liability of the Contractor to the Authority which the Authority has been unable to set off pursuant to clause 48.2 (Set Off on Termination);

48.3.2 any antecedent liability of either party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the Authority Default Termination Sum, Adjusted Highest Compliant Tender Price or Termination Sum as the case may be; and

48.3.3 any liabilities arising in respect of any breach by either party of their obligations under clause 40.3 (Continuing Obligations) which arises or continues after the Termination Date to the extent not taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Agreement.

48.4 Certificate of Senior Lenders

The Authority shall be entitled to rely on the certificate of the Senior Lender 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 Senior Lender of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or elements thereof (as relevant) shall discharge the Authority's obligation to pay such sums to the Contractor.

49 Method of Payment

49.1 Termination Sum

The Authority shall pay to the Contractor the Termination Sum together with as applicable:

49.1.1 any interest on any Base Senior Debt Termination Amount and the Lender RV Element and any Contractor's Residual Value Overage Share (where due) or the EUV-SH of the Leases element of the Termination Sum at the Senior Debt Rate; or

49.1.2 any interest on any Revised Senior Debt Termination Amount and the Lender RV Element and any Contractor's Residual Value Overage Share (where due) or the EUV-SH of the Leases element of the Termination Sum at the Senior Debt Rate,

on or before the date falling forty (40) Business Days after the Notice Date provided that it may elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Lender RV Element (as relevant) element of the Termination Sum in accordance with clause 49.2 (Instalments) below.

49.2 Instalments

The Authority may:

49.2.1 other than on an Authority Default, elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in instalments as follows:

- (a) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is greater than or equal to the Outstanding Principal:
 - (i) in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) representing the Outstanding Principal, on the dates (**Instalment Dates**) and in the amounts that the Contractor would have been required to pay principal to the Senior Lenders under the terms of the Senior Credit Agreement (disregarding any changes to such amounts or dates that have not been approved by the Authority other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; and
 - (ii) in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant), in equal instalments on the Instalment Dates;
- (b) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that the Contractor would have been required to pay as principal to the Senior Lenders on each Instalment Date under the terms of the Senior Credit Agreement (disregarding any changes to such amounts or dates that have not been approved by the Authority other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; or

as the parties may otherwise agree.

49.2.2 in any case (including on an Authority Default) elect to pay the Lender RV Element (if payable in accordance with the provisions of clauses 42 (Compensation on

Termination for Force Majeure), 44 (Compensation on Termination for Authority Default/Voluntary Termination) or 45 (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches):

- (a) on the Expiry Date; or
- (b) 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 Authority has elected to pay in accordance with clause 49.2 (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 or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) in full on any Instalment Date.

49.5 Authority Default in Payment

If the Authority:

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 63.1 (Restrictions on Transfer of the Agreement by the Authority),

the Contractor may issue a notice to the Authority declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Contract, the Lender RV Element, the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable.

PART 8 - GENERAL

50 Liaison

The parties shall give effect to the procedure set out in Schedule 8 (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 Start on Site Date and/or a Planned Services Commencement Date and/or a failure to achieve the relevant Long Stop Date; and/or

51.1.2 adversely affects the ability of the Contractor to perform any of its obligations under this Agreement,

then the Contractor shall be entitled to apply for relief from any rights of the Authority arising under clause 37.4 (Termination on Contractor Default).

51.2 Relief

To obtain relief, the Contractor must:

51.2.1 as soon as practicable, and in any event within ten (10) Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations give to the Authority a notice of its claim for relief from its obligations under this Agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

51.2.2 within five (5) Business Days of receipt by the Authority 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 Authority that:

- (a) 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;
- (b) where applicable, the Relief Event directly caused the delay to the relevant Start on Site Date or Planned Services Commencement Date or, following the relevant Planned Services Commencement Date, delay in achieving Services Commencement by the relevant Long Stop Date;
- (c) 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
- (d) 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 relevant Start on Site Date, relevant Planned Services Commencement Date, or following the Planned Services Commencement Date, the relevant Long Stop Date, shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

51.3.2 the Authority 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 4 (Payment Mechanism) during the period in which the Relief Event is subsisting provided that any such deductions shall be disregarded for the purposes of the Authority's right to terminate this Agreement for a Contractor Default.

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 Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

51.7 **Disputes**

If the parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to any Start on Site Date or any Planned Services Commencement Date or any Long Stop Date, 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 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 Start on Site Date or a Planned Services Commencement Date in relation to a Phase (or following the relevant Planned Services Commencement Date, failure to achieve the relevant Long Stop Date) 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 increase in revenue or 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 to the Senior Lenders.

52.5 Contractor's Share

The Contractor shall be solely responsible for all Losses arising from a General Change in Law (including, for the avoidance of doubt, all Capital Expenditure arising therefrom).

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) Business Days of the date that the agreement or determination referred to in clause 52.4 (Funding for Capital Expenditure) occurred, then the Authority shall pay to the Contractor an amount equal to that Capital Expenditure on or before the date falling twenty (20) Business Days after the Capital Expenditure has been incurred.

52.7 Adjustment to Unitary Charge

Any compensation payable under this clause 52 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 65 (Financial Adjustments).

52.8 Postponement of Planned Services Commencement Date

Any relevant Start on Site Date and/or Planned Services Commencement Date and/or Long Stop Date (as applicable) shall be postponed by such period as is agreed in accordance with clause 52.3 (**Parties to Discuss**) or determined under the Dispute Resolution Procedure.

52.9 Payment of Irrecoverable VAT

The Authority shall pay to the Contractor from time to time as the same is incurred by the Contractor sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law. Any such payment shall be made within twenty (20) Business Days of the delivery by the Contractor to the Authority of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this clause 52.9 **Irrecoverable VAT** means input VAT incurred by the Contractor on any supply which is made to it which is used or to be used exclusively in performing the Works or the Services or any of the obligations or provisions under 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 Authority and Contractor Changes

The Authority may propose an Authority Change and the Contractor may propose a Contractor Change in accordance with the Change Protocol and the parties shall comply with the provisions of the Change Protocol.

54 Authority Step-In

54.1 Right to Step-In

If the Authority reasonably believes that it needs to take action in connection with the Services:

54.1.1 because a serious risk exists to the health or safety of persons or property or to the environment; and/or

54.1.2 to discharge a statutory duty,

then the Authority 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 Authority wishes to take action, the Authority 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 provide the Services during the period such action is being taken.

54.3 Action by Authority

54.3.1 Following service of such notice, the Authority 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 Authority while it is taking the Required Action. The Authority shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as 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 Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify the Contractor against all Direct Losses where it fails to do so.

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 providing any part of the Services:

54.4.1 the Contractor shall be relieved from its obligations to provide such part of the Services; and

54.4.2 in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Unitary Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and 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 providing any part of the Services:

54.5.1 the Contractor shall be relieved of its obligations to provide such part of the Services; and

54.5.2 in respect of the period in which the Authority is taking the Required Action, the Unitary Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action.

54.6 Rights of access

54.6.1 The Authority or a representative of the Authority may enter upon any property used by the Contractor to perform the Services to inspect the construction, operation and maintenance of the Project and to monitor compliance by the Contractor with its obligations.

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

54.6.3 The Contractor shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of clauses 54.6.1 and 54.6.2, subject to the Contractor's 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 Authority is or becomes aware of a breach by the Contractor of its obligations under clause 23.1 (Maintenance) then the Authority may exercise its right of access and remedy such breach and shall be entitled to recover any costs or expenses incurred from the Contractor as a debt.

54.6.5 The Authority and its representative shall at all times comply with any health and safety requirements when exercising its rights under this clause.

54.6.6 If the Authority or its representative causes material damage to any Asset in exercising any right under this clause, then the Authority shall be liable to the Contractor for the reasonable costs directly caused by such damage.

55 Freedom of Information and Confidentiality

55.1 Duty of Confidentiality

- 55.1.1 The Parties agree that the provisions of this Agreement and each Project Document shall, subject to clause 55.1.2 below, not be treated as Confidential Information and may be disclosed without restriction and the Contractor acknowledges that the Authority intends to publish, subject to clause 55.1.2 below, the Agreement and some of the Project Documents on a website.
- 55.1.2 Clause 55.1.1 above shall not apply to provisions of this Agreement or a Project Document designated as Commercially Sensitive Information and listed in Part 1 and Part 2 of Schedule 22 (Commercially Sensitive Information) to this Agreement which shall, subject to clause 55.2 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 74.7.4 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 5.2.8 (Contractor's Undertakings) 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 (Freedom of Information and Confidentiality);
- 55.2.3 any disclosure to enable a determination to be made under clause 60 (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 of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 55.2.6 any provision of information to the parties' own professional advisers or insurance advisers or to the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide

funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under this Agreement, or may wish to acquire shares in the Contractor 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;

55.2.7 any disclosure by the Authority of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new contractor, its advisers and lenders, should the Authority decide to retender this Agreement;

55.2.8 any registration or recording of the Consents and property registration required;

55.2.9 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Agreement; or

55.2.10 any disclosure for the purpose of :

- (a) the examination and certification of the Authority's or the Contractor's accounts;
- (b) any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (c) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
- (d) (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(d) (Permitted Disclosure) nor clause 55.2.4 (Permitted Disclosure) above shall permit disclosure of Confidential Information otherwise prohibited by clause 55.1.3 (Duty of Confidentiality) above where that information is exempt from disclosure under section 41 of the FOIA.

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 National Audit Act 1983 the District Auditor and the Audit Commission may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any sub-contractor and may require the Contractor and any sub-contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Agreement.

55.5 **Exploitation of Information**

The Contractor shall not make use of this Agreement or any information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purposes of this Agreement, except with the written consent of the Authority.

55.6 **Tenant Information**

Where either party, in carrying out its obligations under this Agreement, is provided with information in relation to Tenants, that party shall not disclose nor make use of any such information otherwise than for the purpose for which it was provided unless that party has obtained the prior written consent of the relevant Tenants.

55.7 **Expiry or Termination**

Where the Authority exercises its Termination Option or Expiry Option (as the case may be) the Contractor shall ensure that on or before the Termination Date or the Expiry Date (as the case may be) all documents or computer records in its possession, custody or control, which contain information relating to any Tenant, including any documents in the possession, custody or control of any Sub-Contractor and the Landlord are delivered up to the Authority.

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 Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in clauses 55.10.2 to 55.10.8 (Freedom of Information) (inclusive) below.

55.10.2 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Contractor such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Contractor shall:

- (a) provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
- (b) provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

55.10.3 Following notification under clause 55.10.2 (Freedom of Information), and up until such time as the Contractor has provided the Authority with all the Information specified in clause 55.2.10(a) (Freedom of Information), the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

- (a) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
- (b) whether the Information is to be disclosed in response to a Request for Information, and

in no event shall the Contractor respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.

55.10.4 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least six (6) years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.

55.10.5 The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within two (2) Business 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 Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

55.10.7 In the event of a request from the Authority pursuant to clause 55.10.2 (Freedom of Information) above, the Contractor shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (**Appropriate Limit**) the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case,

the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Authority is itself entitled to reimbursement of such costs in accordance with the Authority's own FOIA policy from time to time

55.10.8 The Contractor acknowledges that (notwithstanding the provisions of clause 55 (Freedom of Information)) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (**Code of Practice**), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:

- (a) in certain circumstances without consulting with the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account,

provided always that where clause 55.10.8(a) above applies the Authority shall, in accordance with the recommendations of the Code of Practice, draw this to the attention of the Contractor prior to any disclosure.

56 Indemnities Guarantees and Contractual Claims

56.1 Contractor's Indemnity

56.1.1 The Contractor shall, subject to clause 56.2 (Contractor not Responsible), be responsible for, and shall release and indemnify the Authority or any Authority Related Party on demand from and against all liability for Direct Losses arising from:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to the Authority or for which it is responsible) but excluding the land, buildings, plant, equipment and other assets which are the responsibility of the Contractor to provide under this Agreement; and
- (c) third party actions, claims and/or demands (other than any which are the subject of the indemnity in clause 56.1.2) brought against the Authority or any Authority Related Party,

which may arise out of, or in consequence of, the design, construction, operation or maintenance of the Apartment Areas or the performance or non-performance by the Contractor of its obligations under this Agreement or the presence at any Apartment Area or Site of the Contractor, a sub-contractor of the Contractor or any Contractor Related Party.

56.1.2 The Contractor shall, subject to clause 56.2 (Contractor not Responsible), be responsible for, and shall release and indemnify the Authority or any Authority Related Party, 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 56.1.1(c)) brought against the Authority or any Authority Related Party for breach of statutory duty which may arise out of, or in consequence of, a breach by the

Contractor of its obligations under this Agreement to the extent that there are no other remedies available to the Authority under this Agreement.

56.2 Contractor not Responsible

The Contractor shall not be responsible or be obliged to indemnify the Authority for:

56.2.1 any matter referred to in clauses 56.1.1(a) (Contractor's Indemnity) that arises as a direct result of the Contractor acting on a written notice issued by the Authority (and for the purposes of this clause 56.2.1, clause 1.7 (Responsibility for Related Parties) shall not apply);

56.2.2 any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or any Authority Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Contractor of its obligations under this Agreement) or by the breach of the Authority of its obligations under this Agreement; or

56.2.3 amounts under this indemnity in excess of [REDACTED] XXXXXXXXX in respect of any Uninsured Losses in any one (1) occurrence or series of occurrences;

56.2.4 amounts under this indemnity in excess of [REDACTED] in respect of any Uninsured Losses in any one (1) Contract Year;

56.2.5 in respect of any claims made pursuant to clause 56.1.1(b) (Contractor's Indemnity) or clause 56.1.1(c) 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);

56.2.6 to the extent that any injury, loss, damage, cost or expense is the responsibility of the Authority pursuant to Clause 56A (Damage to the Apartment Areas)

56.2.7 **NOT USED**

56.3 Limitation of Indemnity

An indemnity by either party under any provision of this Agreement shall be without limitation to any indemnity by that party under any provision of this Agreement.

56.4 **NOT USED**

56.5 **NOT USED**

56.6 Notification of Claims

Where either party (**Indemnified Party**) wishes to make a claim under this Agreement against the other (**Indemnifying Party**), in relation to a claim made against it by a third party (**Third Party Claim**) the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

56.7 **Conduct of Claims**

Subject to the rights of the insurers under the Required Insurances, the Indemnifying Party may at its own expense and with the assistance and co-operation of the Indemnified Party have the conduct of the Third Party Claim including its settlement and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the Third Party Claim within a reasonable period, take any action to settle or prosecute the Third Party Claim.

56.8 **Costs of Claims**

The Indemnifying Party shall, if it wishes to have conduct of any Third Party Claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the Third Party Claim by the Indemnifying Party.

56.9 **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.

56.10 **Sub-Contractor Losses**

Where:

56.10.1 a Sub-Contractor is entitled to claim any compensation and/or relief from the Contractor under the Sub-Contracts; and

56.10.2 the Contractor subsequently makes a claim against the Authority under this Agreement in relation to such compensation and/or relief,

the Authority waives any right to defend the Contractor's claim on the ground that the Contractor is only required to pay compensation or grant relief to the Sub-Contractor under the Sub-Contracts to the extent that the same is recoverable from the Authority.

56A **Damage to the Apartment Areas**

56A.1 **Damage**

Without prejudice to the obligations of the Contractor to repair, maintain and replace the Apartment Areas and subject to clause 56A.5 (Damage of Minor Nature), as between the Authority and the Contractor:

56A.1.1 the Authority shall only be responsible for the cost of damage to a Site (including the Apartment Areas thereon and the contents of the same) if the Contractor demonstrates to the Authority's satisfaction (acting reasonably) that the damage:

- (a) does not constitute fair wear and tear;
- (b) does not arise as a result of the damaged item being used for its reasonable and proper purpose in the proper manner or a Site or an Apartment Area (or any part thereof) being used for its reasonable and proper purpose in the proper manner,
- (c) was caused by the Authority or an Authority Related Party; and

- (d) the cost of such damage is either:
 - (i) of a value below the level of the deductible of the Required Insurance (up to the maximum deductible specified in the Required Insurances); or
 - (ii) not covered by the insurances taken out, or which should have been taken out by the Contractor in accordance with this Agreement,

(together **Authority Damage**)

provided that the Authority shall be liable for any excess or deductible (up to the amount of any maximum deductible specified in the Required Insurances) which is payable as a result of any Authority Damage which has resulted in a Repair Cost being incurred where such Repair Cost has been funded under any such insurance; and

56A.1.2 The Authority shall not have responsibility for the cost of damage pursuant to clause 56A.1.1(a) (Damage) to the extent that the damage was caused by or contributed to by:

- (a) any act or negligence of the Contractor or a Contractor Related Party;
- (b) any act or negligence of a Tenant; or
- (c) a breach by the Contractor or a Contractor Related Party of this Agreement (including any failure to monitor or provide the Services).

56A.2 **Discovery of Damage**

Upon the discovery of any damage the Contractor shall:

56A.2.1 record any relevant detail of the damage (including photographs if necessary);

56A.2.2 as soon as is practicable, reinstate, replace or make good the damage returning the damaged item to its original standard (or equivalent) in accordance with the relevant provisions of this Agreement including where relevant in accordance with clause 58 (Reinstatement and Change of Requirement after Insured Event); and;

56A.2.3 as soon as practicable notify the Authority's Representative and discuss with the Authority's Representative whether or not the damage constitutes Authority Damage and whether there should be an extension of the Rectification Periods pursuant to Schedule 4 (Payment Mechanism) and, if so, what reasonable extension should be agreed.

56A.3 **Invoice**

Where the Contractor and the Authority's Representative:

56A.3.1 agree that the relevant damage constitutes Authority Damage, the Contractor shall be entitled to issue an invoice in respect of its reasonable and demonstrable costs incurred in reinstating the damage but only in respect of those costs that are the responsibility of the Authority under clause 56A (Damage); or

56A.3.2 do not agree that the relevant damage constitutes Authority Damage, the matter shall be referred to the Dispute Resolution Procedure for resolution and if the dispute is resolved in the Contractor's favour, the Contractor shall be permitted to submit an invoice in respect of its reasonable and demonstrable costs incurred in reinstating the damage but only in respect of those costs that are the responsibility of the Authority under clause 56A (Damage).

56A.3.3 agree an extension to the applicable Rectification Period in accordance with clause 56A.2 (Discovery of Damage), such extended Rectification Period shall apply in respect of the relevant damage for the purposes of Schedule 4 (Payment Mechanism) to this Agreement;

56A.3.4 do not agree either that there should be an extension to the relevant Rectification Period or what the extension should be, the matter shall be referred to the Dispute Resolution Procedure.

56A.4 Payment of Invoice

Any invoice submitted to the Authority pursuant to clause 56A.3 (Invoice) shall be supported by any relevant information recorded pursuant to clause 56A.2.1 (Discovery of Damage), and may be in respect of multiple incidents of damage. The Authority shall pay any such invoice within twenty (20) Business Days of receipt by the Authority of the invoice and supporting information.

56A.5 Damage of Minor Nature

If any Authority Damage is of such a minor nature (when considered item by item and in aggregate) that it can be remedied by the Contractor without incurring any additional costs through the use of its site-based resources during its normal working hours and without adversely affecting the ability of the Contractor to perform the Services, then the cost of rectifying such damage shall be for the account of the Contractor.

56A.6 Disputes

Any disputes between the parties from this clause 56A (Damage) shall be referred to the Dispute Resolution Procedure.

56A.7 Damage Funding

In relation to any Repair Cost which has been funded or partly funded by the Authority or under any Required Insurance (Damage Funding) the Contractor shall take such Damage Funding and the timing of such repair or replacement into account in preparing and agreeing with the Authority the Cyclical Maintenance and Replacement Programme and the Planned Maintenance Programme (as the case may be) and any savings shall be shared equally between the Contractor and the Authority.

56A.8 Annual Account

At the end of each Year the Contractor shall supply to the Authority an account of any damage and associated Repair Costs and Damage Funding, as well as money spent or saved or to be spent or saved in accordance with the Cyclical Maintenance and Replacement Programme and the Planned Maintenance Programme (as the case may be).

56A.9 **Five (5) Year Account**

On every fifth (5th) anniversary of the first Services Commencement Date the Contractor shall provide a consolidated and reconciled account of the accounts referred to in clause 56A.8 (Annual Account). If such account shows that in respect of the preceding five (5) Year period there is a saving in the money spent by the Contractor in complying with its obligations under this Agreement because of the Damage Funding then the Contractor will within thirty (30) Business Days after submission of the account pay to the Authority half of such saving.

57 Insurance

57.1 Requirement to Maintain

57.1.1 The Contractor shall prior to the carrying out of any building or demolition work on a Site, take out and maintain or procure the maintenance of the insurances described in part 1 of Schedule 11 (Insurances) and any other insurances as may be required by law. These insurances must be effective in each case not later than the date on which the relevant risk commences.

57.1.2 The Contractor shall during the Services Period take out and maintain or procure the maintenance of the insurances described in part 2 of Schedule 11 (Insurances) and any other insurances required by law. These insurances must be effective in each case not later than the date on which the relevant risk commences

57.2 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.

57.3 Nature of the Insurances

With the exception of any insurances required by law, the insurances referred to in clauses 57.1.1 and 57.1.2 (Requirement to Maintain) above shall:

57.3.1 subject to clause 57.4 (Co-Insured) below, name the Authority as co-insured with any other party maintaining the insurance;

57.3.2 provide for non-vitiation protection in respect of any claim made by the Authority as co-insured in accordance with Endorsement 6 in part 3 of Schedule 11;

57.3.3 contain a clause waiving the insurers' subrogation rights against the Authority and its employees and agents in accordance with Endorsement 12 in part 3 of Schedule 11;

57.3.4 provide for thirty (30) days' prior written notice of their cancellation, non-renewal or amendment to be given to the Authority in accordance with Endorsement 7 and 8 in part 3 of Schedule 11; and

57.3.5 in respect of the Physical Damage Policies provide for payment of any proceeds received by the Contractor to be applied in accordance with clause 58 (Reinstatement and Change of Requirement after Insured Event).

57.4 **Co-Insured**

Wherever possible, where the Authority is to be a co-insured party in accordance with Schedule 11 (Insurances), the insurances referred to in clauses 57.1.1 and 57.1.2 (Requirement to Maintain) shall name the Authority as a co-insured for its separate interest.

57.5 **Evidence of Policies**

The Contractor shall provide to the Authority:

57.5.1 copies on request of all insurance policies referred to in clauses 57.1.1 and 57.1.2 (Requirement to Maintain) above (together with any other information reasonably requested by the Authority relating to such insurance policies) and the Authority shall be entitled to inspect them during ordinary business hours; and

57.5.2 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 57 (Insurance) and Schedule 11 (Insurances).

57.6 **Renewal Certificates**

Renewal certificates in relation to any of the insurances referred to in clauses 57.1.1 and 57.1.2 (Requirement to Maintain) shall be obtained as and when necessary and copies (certified in a manner acceptable to the Authority) shall be forwarded to the Authority as soon as possible but in any event on or before the renewal date.

57.7 **Breach**

If the Contractor is in breach of clauses 57.1.1 and 57.1.2 (Requirement to Maintain) above, the Authority may pay any premiums required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from the Contractor on written demand.

57.8 **Notification of Claims**

The Contractor shall give the Authority notification within twenty (20) Business Days after any claim in excess of [REDACTED] on any of the insurance policies referred to in this clause accompanied by full details of the incident giving rise to the claim.

57.9 **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.

57.10 **Premia**

The insurance premiums referred to in clauses 57.1.1 and 57.1.2 (Requirement to Maintain) shall at all times be the responsibility of the Contractor.

57.11 **Authority Approval**

The insurances referred to in this clause shall be effected with insurers approved by the Authority, such approval not to be unreasonably withheld or delayed.

58 Reinstatement and Change of Requirement after Insured Event

58.1 Application of Insurance Proceeds

All insurance proceeds received under any policy referred to in paragraph 1 of parts 1 and 2 of Schedule 11 (**Physical Damage Policies**) shall be applied to repair, reinstate, replace each part or parts of the Apartment Areas and Assets in respect of which such proceeds were received.

58.2 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 [REDACTED] shall be paid into the Joint Insurance Account.

58.3 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 [REDACTED]

58.3.1 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 58.4 (Works Carried Out) below. The Reinstatement Plan shall set out:

- (a) 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 Authority; and
- (b) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written approval of the Authority, which approval shall not be unreasonably delayed;

58.3.2 provided that the Authority is satisfied that the Reinstatement Plan will enable the Contractor to comply with clause 58.4 (Works Carried Out) below within a reasonable timescale:

- (a) the Reinstatement Plan will be adopted;
- (b) the Contractor shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan approved by the Authority;
- (c) 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 58.3.2(b) (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 Authority may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;

- (d) the Authority agrees and undertakes that, subject to compliance by the Contractor with its obligations under this clause, and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in clause 58.3.2(b) (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;
- (e) the Authority undertakes to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan; and
- (f) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with clause 58.4 (Works Carried Out) below the Authority shall permit withdrawal by the Contractor of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under clause 58.3.2(c) (Obligations) above, in respect of the Relevant Incident, together with any interest accrued;
- (g) subject to the provision of clause 56.1 (Contractor's Indemnity) the Contractor shall be solely responsible for the payment of any deficiency.

58.4 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 Output Specification and the Contractor's Proposals so that on completion of the work, the provisions of the Agreement are complied with.

59 Risks that become Uninsurable

59.1 Uninsurable Risks

Nothing in clause 57 (Insurance) or this clause 59 (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.

59.2 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:

- 59.2.1 the Contractor shall notify the Authority of any risk becoming Uninsurable within five (5) Business Days of becoming aware of the same and in any event at least five (5)

Business Days before expiry or cancellation of any existing insurance in respect of that risk; and

59.2.2 if both parties agree or it is determined in accordance with the Dispute Resolution Procedure that the risk is Uninsurable and that:

- (a) the risk being Uninsurable is not caused by the actions of the Contractor or any sub-contractor of the Contractor; and
- (b) the Contractor has demonstrated to the Authority that the Contractor and a prudent board of directors of a company operating the same or substantially similar PFI businesses in the United Kingdom to that operated by the Contractor would in similar circumstances (in the absence of the type of relief envisaged by this clause) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company

the parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either party).

59.3 Consequences

59.3.1 If the requirements of clause 59.2 (**Risks Become Uninsurable**) are satisfied, but the parties cannot agree as to how to manage or share the risk, then:

- (a) in respect of such third party liability insurance only the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to the amount calculated in accordance with clause 42 (Compensation on Termination for Force Majeure) and the Agreement will terminate, or elect to allow the Agreement to continue and clause 59.3.1(b) (Consequences) below shall thereafter apply in respect of such risk; and
- (b) in respect of such contractors' 'all risks' insurance, property damage insurance, third party liability insurance (if the Authority elects to allow the Agreement to continue in accordance with clause 59.3.1(a) (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 Authority shall (at the Authority'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; and
- (c) where pursuant to clauses 59.3.1(a) and/or 59.3.1(b) (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

- (d) where pursuant to clauses 59.3.1(a) and/or 59.3.1(b) (Consequences) this Agreement continues the Contractor shall approach the insurance market at least every four months to establish whether the risk remains Uninsurable. As soon as the Contractor is aware that the risk is no longer Uninsurable, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Agreement.
- (e) in respect of any period between the Authority receiving notification in accordance with clause 59.2.1 that a TPL Risk has become Uninsurable and the Authority's notification to the Contractor in accordance with clause 59.3.1(a) in respect of such risk, then provided it is ultimately agreed or determined that the requirements of clause 59.3.1(b) above are satisfied in respect of the Uninsurable TPL Risk and subject to clause 59.3.1(f) below, clause 59.3.1(b) shall apply in respect of occurrences of the Uninsurable TPL Risk during such period unless the parties otherwise agree how to manage the risk during the period; and
- (f) clause 59.3.1(e) 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 59.2.2 are satisfied in respect of the Uninsurable TPL Risk and/or (b) meeting with the Authority to discuss the means by which the risk should be managed.

59.4 Contractor's Option

If pursuant to clause 59.3.1(b) (Consequences), the Authority 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 (20) Business Days of the date of such election by the Authority (**Option Period**)) to pay to the Authority on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable, in which case the Agreement will continue (and the Relevant Payment will not be made by the Authority), and the Contractor's payments shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

59.5 Unavailability of Terms and Conditions

59.5.1 If, upon the renewal of any insurance which the Contractor is required to maintain or to procure the maintenance of pursuant to this Agreement:

- (a) any Insurance Term is not available to the Contractor in the worldwide insurance market with reputable insurers of good standing; and/or
- (b) 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 59.5.2 (Unavailability of Terms and Conditions) shall apply.

- 59.5.2 If it is agreed or determined that clause 59.5.1 (Unavailability of Terms and Conditions) applies then the Authority shall waive the Contractor's obligations in clause 57.1 (Requirement to Maintain) and/or Schedule 11 (Insurances) in respect of that particular Insurance Term and the Contractor shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Agreement as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in clause 59.5.1 (Unavailability of Terms and Conditions) continue to apply to such Insurance Term.
- 59.5.3 To the extent that the parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to the Contractor in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address the Contractor's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Contractor shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Agreement, the costs of such insurance shall be subject to the premium costs sharing mechanism set out at Schedule 23 (Insurance Premium Risk Sharing Schedule).
- 59.5.4 Not Used
- 59.5.5 Not Used
- 59.5.6 The Contractor shall notify the Authority as soon as reasonably practicable and in any event within five days of becoming aware that clause 59.5.1(a) and/or clause 59.5.1(b) (Unavailability of Terms and Conditions) are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Contractor shall provide the Authority with such information as the Authority reasonably requests regarding the unavailability of the Insurance Term and the parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.
- 59.5.7 In the event that clause 59.5.1(a) and/or clause 59.5.1(b) (Unavailability of Terms and Conditions) apply in respect of an Insurance Term, (irrespective of the reasons for the same) the Contractor shall approach the insurance market at least every four months to establish whether clause 59.5.1(a) and/or clause 59.5.1(b) (Unavailability of Terms and Conditions) remain applicable to the Insurance Term. As soon as the Contractor is aware that clause 59.5.1(a) and/or clause 59.5.1(b) (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.

60 Dispute Resolution

60.1 Disputes

Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 60.

60.2 Consultation

If a dispute arises in relation to any aspect of this Agreement, the Contractor and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

60.3 Adjudication

Without prejudice to clause 60.2 (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 60.4 (Identity of Adjudicator) (**Adjudicator**).

60.4 Identity of Adjudicator

The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts appointed in accordance with the following:

60.4.1 there shall be three (3) panels of experts, one (1) in respect of construction matters (the **Construction Panel**), one (1) in respect of operational and maintenance matters (the **Operational Panel**) and one (1) in respect of financial matters (the **Financial Panel**). All the experts on each panel shall be wholly independent of the Contractor, the Authority, the relevant Sub-Contractor and any of the major competitors of the Contractor or relevant Sub-Contractor;

60.4.2 the Construction Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place within twenty (20) Business Days of the Commencement Date;

60.4.3 the Operational Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place within twenty (20) Business Days of the Commencement Date;

60.4.4 the Financial Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place within twenty (20) Business Days of the Commencement Date;

60.4.5 if any member of a panel resigns during the term of this Agreement, a replacement expert shall be appointed by the Contractor and the Authority as soon as practicable;

60.4.6 if the Authority and the Contractor are unable to agree on the identity of the experts to be appointed to the panels, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert(s) within twenty (20) Business Days of any application for such appointment by either party.

60.5 Submission of Arguments

Within five (5) Business Days of appointment in relation to a particular dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The

Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

60.6 Adjudicator's Decision

In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty (20) Business Days of appointment (or such other period as the parties may agree after the reference) or thirty (30) Business Days from the date of reference if the party which referred the dispute agrees. Unless the parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the courts, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

60.7 Adjudicator's Costs

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

60.8 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.

60.9 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.

60.10 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.

60.11 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.

60.12 Reference to the Courts

If:

60.12.1 there is any dispute in respect of matters referred to in clauses 42 (Compensation on Termination for Force Majeure), 43 (Compensation on Termination for Contractor Default), 44 (Compensation on Termination for Authority Default/Voluntary Termination), 45 (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches), 52 (Change in Law) or the Change Protocol;

60.12.2 either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with clause 60.6 (Adjudicator's Decision); or

60.12.3 both parties agree,

then either party may (within twenty (20) Business Days of receipt of the Adjudicator's decision, where appropriate), notify the other party of its intention to refer the dispute to the courts of England for final determination.

60.13 NOT USED

60.14 NOT USED

60.15 NOT USED

60.16 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 60 and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause 60.

60.17 Similar Disputes

If any dispute arising under this Agreement raises issues which relate to:

60.17.1 any dispute between the Contractor and the Building Contractor arising under the Building Contract or otherwise affects the relationship or rights of the Contractor and/or the Building Contractor under the Building Contract (the **Building Contract Dispute**); or

60.17.2 any dispute between the Contractor and the Housing Management Contractor arising under the Housing Management Agreement or otherwise affects the relationship or rights of the Contractor and/or the Housing Management Contractor under the Housing Management Agreement (**Housing Management Agreement Dispute**),

60.17.3 any dispute between the Contractor and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor arising under the Responsive Repairs and Cyclical Maintenance and Renewal Contract or otherwise affects the relationship or the right of the Contractor and/or Responsive Repairs and Cyclical Maintenance and Renewal Contractor under the Responsive Repairs and Cyclical Maintenance and Renewal Contract (**Responsive Repairs and Cyclical Maintenance and Renewal Contract Dispute**),

then the Contractor may include as part of its submissions made to the Adjudicator submissions made by the Building Contractor, or by the Housing Management Contractor or Responsive Repairs and Cyclical Maintenance and Renewal Contractor as appropriate.

60.18 Jurisdiction over Sub-Contractors

The Adjudicator shall not have jurisdiction to determine the Building Contract Dispute or the Housing Management Agreement or the Responsive Repairs and Cyclical Maintenance and Renewal Contract Dispute but the decision of the Adjudicator shall, subject to clause 60.12 (Reference to the Courts), be binding on the Contractor and the Building Contractor insofar as it determines the issues relating to the Building Contract Dispute and on the Contractor and the Housing Management Contractor insofar as it determines the issues relating to the Housing Management Agreement Dispute and the Contractor and the Responsive Repairs and Cyclical Maintenance and Renewal Contractor insofar as it determines the issues relating to the Responsive Repairs and Cyclical Maintenance and Renewal Contract.

60.19 Sub-Contractors' Submissions

Any submissions made by the Building Contractor or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor shall:

60.19.1 be made within the time limits applicable to the delivery of submissions by the Contractor; and

60.19.2 concern only those matters which relate to the dispute between the Authority and the Contractor under this Agreement.

60.20 Costs

Where the Building Contractor or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor makes submissions in any reference before the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third (1/3) by the Authority and two-thirds (2/3) by the Contractor

60.21 Authority's Liability

The Authority shall have no liability to the Building Contractor or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor arising out of or in connection with any decision of the Adjudicator or in respect of the costs of the Building Contractor or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor in participating in the resolution of any dispute under this Agreement.

60.22 Access to Documents

The Contractor shall not allow the Building Contractor or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor access to any document relevant to issues in dispute between the Authority and the Contractor save where:

60.22.1 the document is relevant also to the issues relating to the Building Contract Dispute or the Housing Management Agreement Dispute or the Responsive Repairs and Cyclical Maintenance and Renewal Contract Dispute as the case may be; and

60.22.2 the Contractor has first delivered to the Authority a written undertaking from the Building Contractor and/or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor (as appropriate) addressed to the Authority that they shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Agreement and that they shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or any professional adviser engaged by the Building Contractor or the Housing Management Contractor or the Responsive Repairs and Cyclical Maintenance and Renewal Contractor (as appropriate) to advise in connection with the dispute.

61 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.

62 Intellectual Property

62.1 Project Data

Without prejudice to any other clause of this Agreement, the Contractor shall make available to the Authority free of charge (and hereby irrevocably licences the Authority to use) all Project Data that is requested by the Authority and the Contractor shall ensure that it obtains all necessary licences, permissions and consents to ensure that it can make the Project Data available to the Authority on these terms, to use the same for the purposes of:

62.1.1 the Authority providing the Apartment Areas:

62.1.2 the Authority performing its duties under this Agreement;

62.1.3 the Authority performing any statutory duties which it may have; and/or

62.1.4 following termination of this Agreement, the design or construction of the Apartment Areas, the operation, maintenance or improvement of the Apartment Areas and/or the provision of works and/or services the same as or similar to the Works and/or 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.

62.2 Ancillary Intellectual Property Rights

Ownership of Ancillary Intellectual Property Rights shall not be affected by this Agreement and accordingly:

62.2.1 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

62.2.2 to the extent that the Ancillary Intellectual Property Rights are created after the date of this Agreement, ownership of such rights remains with the Contractor or, as the case may be, the third party licensing use of the same to the Contractor.

Nothing in this Agreement is intended to give the Authority any right, title or interest in any Ancillary Intellectual Property Rights which may be disclosed to it by the Contractor which is otherwise made available to it in connection with this Agreement, save as specifically set out in this Agreement.

62.3 Computer Data and Materials

To the extent that any of the data, materials and documents referred to in this clause 62 (Intellectual Property) are generated by or maintained on a computer or similar system, the Contractor shall:

62.3.1 use all reasonable endeavours to procure for the benefit of the Authority, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the Authority or its nominee to access and otherwise use (subject to the payment by the Authority of the relevant fee, if any) such data for the Approved Purposes. As an alternative, the Contractor may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format; and

62.3.2 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.

62.4 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 62.3 (Computer Data and Materials) in accordance with Good Industry Practice. Without prejudice to this obligation, the Contractor shall submit to the Authority's Representative for approval its proposals for the back-up and storage in safe custody of the data, materials and documents and the Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. The Contractor shall comply, and shall cause all Contractor Related Parties to comply, with all procedures to which the Authority's Representative has given its approval. The Contractor may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Authority's Representative, who shall be entitled to object on the basis set out above.

62.5 Contractor Indemnity

Where a claim or proceeding is made or brought against the Authority which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, plant, machinery or equipment in connection with the Works or the Project infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement, the Contractor shall indemnify the Authority at all times from and against all such claims and proceedings and the provisions of clause 56 (Indemnities Guarantees and Contractual Claims) shall apply.

62.6 Licence to Contractor

The Authority hereby grants to the Contractor a non-transferable, non-exclusive, royalty free licence (carrying the right to grant sub-licences) to use for the duration of this Agreement only and only for purposes directly relating to the Project any Intellectual Property Rights relating to the Project which are or become vested in the Authority.

63 Assignment and Sub-Contracting

63.1 Restrictions on Transfer of the Agreement by the Authority

The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Agreement and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement being:

63.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;

63.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement and the Direct Agreement; or

63.1.3 any other public body whose obligations under this Agreement and the Direct Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Agreement and the Direct Agreement.

63.2 Restriction on the Contractor

Subject to clause 63.3 (Exception) and subject always to the provisions of the Direct Agreement, the Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Agreement in whole or in part except with the prior written consent of the Authority.

63.3 Exception

63.3.1 The provisions of clause 63.2 do not apply to the grant of any security for any loan made to the Contractor under the Financing Agreements.

63.3.2 Nothing in this Agreement shall prohibit the Contractor from providing or procuring the provision of the Works or the Services from a Sub-Contractor having the legal capacity, power and authority to become a party to and perform the obligations of the relevant Sub-Contract and employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it which are sufficient to enable it to perform the obligations of the Sub-Contractor under the relevant Sub-Contract and whose identity has been notified to the Authority (and who the Authority has approved, such approval not to be unreasonably withheld, and to be given (or withheld) within twenty (20) Business Days of notice) prior to the appointment of such Sub-Contractor, provided that the Contractor shall remain primarily and directly liable for the Contractor's obligations under this Agreement. By entering into this Agreement, the Authority approves the Sub-Contractors appointed by the Contractor as at the Commencement Date.

63.4 Contractor's Obligations

The Contractor shall perform its obligations under and observe all the terms of any Sub-Contract with a Sub-Contractor.

63.5 Sub-Contractors

Nothing in this Agreement shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Authority at any establishments of the Authority.

63.6 Replacement of Sub-Contractors

63.6.1 On not more than two such occasions during the Contract Period on the substitution or replacement of a defaulting Sub-Contractor (other than the Building Contractor) or a defaulting sub-contractor to the Sub-Contractor (other than the Building Contractor) (in both cases provided that the Contractor is acting in compliance with clause 47.2 (Changes to Project Documents), the Contractor may elect that for the purposes of clause 37.4 (Termination on Contractor Default) only:

- (a) any accrued Unavailability Deductions and Unavailability Ratchet Factor; and/or
- (b) any accrued Performance Deductions and Performance Ratchet; and/or
- (c) any warning notices or Final Warning Notices in respect of clause 38 (Termination for Persistent Breach by the Contractor),

in each case relating to the relevant Services in respect of which the Sub-Contractor or any Sub-Contractor to the Sub-Contractor is being replaced, shall be cancelled. The Contractor shall notify the Authority on or before the appointment of any such substitute or replacement Sub-Contractor or sub-contractor whether it elects for this clause 63.6 (Replacement of Sub-Contractors) to apply on that occasion.

63.6.2 Where an election is made pursuant to clause 63.6.1 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:

- (a) no Unavailability Deductions or Unavailability Ratchet Factor; and
- (b) no Performance Deductions or Performance Ratchet; and
- (c) 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 (b), (l), (m), (n) and (o) inclusive of the definition of Contractor Default in respect of a Service during a period of two (2) months from the date on which that Service is first provided by the replacement or substitute Sub-Contractor or sub-contractor as appropriate. For the avoidance of doubt, deductions shall still be made from the Unitary Charge in respect of Unavailability Deductions and Performance Deductions incurred during that period.

64 Corporate Structures

64.1 Contractor Warranty

The Contractor represents and warrants to the Authority that at the date of this Agreement the legal and beneficial ownership of the Contractor is as set out in part 3 of Schedule 9 (Contractor 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.

64.2 **Notification**

64.2.1 Without prejudice to clause 64.5 (Restricted Share Transfer), the Contractor shall provide the Authority with at least twenty (20) Business Days prior written notice (or such notice as is reasonably practicable in the case of clauses 64.5.2(a) and/or 64.5.2(b)) of any Change in Ownership contemplated by the Contractor together with details of the new ownership structure (legal and beneficial) and the proposed purchase price to enable the Authority to determine whether the Authority considers the transfer to be to an Unsuitable Third Party.

64.2.2 If the Authority forms the view that the proposed Change in Ownership is to an Unsuitable Third Party it will promptly notify the Contractor in writing that it objects to the proposed Change in Ownership and is withholding its written consent to the Change in Ownership under clause 64.5.4.

64.2.3 Any dispute arising shall be dealt with in accordance with clause 60 (Dispute Resolution).

64.3 **Authority Request**

The Authority may, not more than four times 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) Business Days of receipt of the Authority's request for details of any Change in Ownership occurring.

64.4 **Contractor's Awareness**

The Contractor's obligations under clauses 64.2 (Notification) and 64.3 (Authority Request) above shall, except where a legal transfer of shares has occurred, be limited to the extent of the Contractor's awareness having made all reasonable enquiry.

64.5 **Restricted Share Transfer**

64.5.1 No Change in Ownership may occur during the Lock-in Period.

64.5.2 Any Change in Ownership arising as a consequence of:

- (a) the grant or enforcement of security in favour of the Senior Lenders over or in relation to any of the shares of the Contractor provided that any document conferring security over any shares has been approved by the Authority (such approval not to be unreasonably withheld or delayed); or
- (b) 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
- (c) any transfer of shares in the Contractor by The Riverside Group Limited and/or an Affiliate of The Riverside Group Limited to The Riverside Group Limited and/or an Affiliate of The Riverside Group Limited.

shall be disregarded for the purpose of clause 64.5.1 and 64.5.4 (Restricted Share Transfer).

64.5.3 Where, during the Lock-in Period, the holder of any shares in the Contractor is an Affiliate of the Riverside Group Limited and that holder ceases to be an Affiliate of the Riverside Group Limited it shall be a breach of this clause 64.5 if the shares held by that holder are not within twenty (20) Business Days of that holder ceasing to be an Affiliate of the Riverside Group Limited transferred to the Riverside Group Limited or an Affiliate of the Riverside Group Limited.

64.5.4 The Contractor shall obtain the Authority's prior written consent (which may be given subject to conditions) to any Restricted Share Transfer.

65 Financial Adjustments

65.1 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 65 (Financial Adjustments). Where for the purposes of this clause 65 (Financial Adjustments) the Base Case is to be adjusted by reference to a Relevant Event, this shall be carried out by the Contractor, in consultation with the Authority, to reflect the impact of any prior Relevant Event on the version of the Base Case applicable immediately prior to the relevant adjustment and to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken, including the effect of Estimated Change in Project Costs. In calculating any Estimated Change in Project Costs, 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:

65.1.1 any Change in Costs and Change in Revenue;

65.1.2 reasonable economic assumptions prevailing at the time; and

65.1.3 changes in the prospective technical performance of the Project arising as a result of the Relevant Event,

provided that the Authority shall not be required (and the Contractor shall not be entitled) to take into account the financial impact up to the date of the Relevant Event of those risks which the Contractor bears under the terms of this Agreement, including (to the extent so borne by the Contractor under this Agreement) changes in VAT rates, taxation rates, RPI and the impact of Unavailability Deductions and Performance Deductions.

65.2 Application to the Base Case

Where, pursuant to this Agreement, either party is entitled to payment of any sum the assessment of which properly requires reference to the Base Case (with the exception of payment of the Authority's Refinancing Share to which clause 80 (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 65 (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.

65.3 **No Better and no Worse**

65.3.1 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:

- (a) rights, duties and liabilities under or arising pursuant to performance of this Agreement, the Financing Agreements the Building Contract, the Housing Management Agreement and the Responsive Repairs and Cyclical Maintenance and Renewal Contract; and
- (b) ability to perform its obligations and exercise its rights under this Agreement, the Financing Agreements, the Building Contract and the Housing Management Agreement and the Responsive Repairs and Cyclical Maintenance and Renewal Contract,

so as to ensure that:

65.3.2 the Contractor is left in a position which is no better and no worse in relation to the key ratios (to include loan life cover and debt service reserve) and internal rate of return by reference to the version of the Base Case applicable immediately prior to the Relevant Event than had the Relevant Event not occurred; and

65.3.3 the ability of the Contractor to comply with this Agreement is not adversely affected or improved as a consequence of the Relevant Event.

65.4 **Replacement of Base Case**

Any Base Case produced following adjustments in accordance with this clause 65 (Financial Adjustments) shall, when it is approved by the Authority (such approval not to be unreasonably withheld) become the Base Case for the purposes of this Agreement until its further amendment in accordance with this Agreement.

65.5 **Amendments to Logic and/or Formulae**

65.5.1 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.

65.5.2 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 loan life cover and debt service return)* from the Base Case are maintained at no higher or no lower levels than the *key ratios (to include loan life cover and debt service return)* immediately post the amendment, and the difference in the pre-tax Project IRR after and immediately prior to amendment does not differ by more than [REDACTED] basis points (being [REDACTED]) as shown in the resulting figure).

65.6 **Copies of the Revised Base Case**

Following any change to the Base Case under the provisions of this clause 65 (Financial Adjustments), the Contractor shall promptly deliver a copy of the revised Base Case to the Authority in the same form as is established at the date of the Agreement or in such other form as may be agreed between the parties.

66 Audit Access

Notwithstanding the provisions of clause 74.3 (Maintenance of Records), the Contractor shall co-operate fully and in a timely manner with any reasonable request from time to time of any auditor (whether internal or external) of the Authority and at the expense of the Contractor to provide documents, or to procure the provision of documents, relating to the Project, and to provide, or to procure the provision of, any oral or written explanation relating to the same.

67 No Agency

67.1 No Partnership or Employment

Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.

67.2 Power to Bind

Save as expressly provided otherwise in this Agreement, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

67.3 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.

68 Entire Agreement

68.1 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.

68.2 Acknowledgements

Each of the parties acknowledges that:

68.2.1 subject to clause 8.10 (Authority Warranty) 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

68.2.2 this clause 68 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.

69 Notices

69.1 Form and Service of Notices

All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile or by hand, or leaving the same at:

Contractor	Authority
[REDACTED]	[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]
Fax - [REDACTED]	Fax - [REDACTED]

69.2 Provision of Information to Representatives

Where any information or documentation is to be provided or submitted to the Authority's Representative or the Contractor's Representative it shall be provided or submitted by sending the same by first class post, facsimile or by hand, or leaving the same at:

Contractor's Representative	Authority Representative
[REDACTED]	[REDACTED] (Project Director)
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Fax - [REDACTED] Email: [REDACTED]	Fax - [REDACTED]

69.3 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.

69.4 Notices by Post

Notices given by post shall be effective upon the earlier of actual receipt and five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of

uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

69.4.1 within two (2) hours after sending, if sent on a Business Days between the hours of 9am and 4pm; or

69.4.2 by 11am on the next following Business Days, if sent after 4pm on a Business Days but before 9am on that next following Business Days.

70 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.

71 Waiver

71.1 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.

71.2 Extent of Waiver

No waiver under clause 71.1 (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.

72 Public Relations and Publicity

72.1 Restriction

The Contractor shall not by itself, its employees or agents and procure that its sub-contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed).

72.2 Photographs

No facilities to photograph or film in or upon any property used in relation to the Project shall be given or permitted by the Contractor unless the Authority has given its prior written approval.

73 Advertisements

The Contractor shall not exhibit or attach to any part of the Sites any notice or advertisement without the prior written permission of the Authority's Representative, save where otherwise required to comply with Legislation.

74 Contractor's Records and Provision of Information

74.1 Records of Costs

The Contractor shall:

- 74.1.1 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 its design, construction, maintenance, operation and financing of the Project;
- 74.1.2 upon request by the Authority, provide a written summary of any of the costs referred to in clause 74.1.1 (**Records of Costs**), including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may require to enable the Authority to monitor performance by the Contractor under this Agreement;
- 74.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause 74 (Contractor's Records and Provision of Information); and
- (a) at the request of the Authority, provide to the Authority any information provided by it to the Senior Lenders during the Contract Period;
- (b) provide to the Authority copies of its annual report and accounts within twenty (20) Business Days of publication; and
- (c) provide to the Authority a copy of the Senior Lender's Base Case at Financial Close and (as the same may be amended) within twenty (20) Business Days of any amendment thereto
- 74.1.4 within forty (40) Business Days following signature of this Agreement, provide to the Authority as part of the Operating Manual a summary of the Agreement and of the Contractor's operating procedures written in plain English to aid the Authority's management of the Agreement containing the following items:

Item	Content
Introduction	Purpose of document and what it covers.
Project Objectives:	Project overview including the overall risk allocation.
Team Structures:	Contract management team organograms, roles and responsibilities, key contacts, for Authority (including stakeholders) and Contractor (including Shareholder roles).
Decision Making:	Delegated powers, communication protocols and processes.
Reporting Requirements:	Meetings, purpose, frequency, attendees, chair, outputs.
The Agreement:	Purpose, key operational clauses, key dates, planned reviews.
Changes:	Change protocol, details of, reasons for any made to date.
Payment mechanism:	Principles, application for payment, service point deductions.
Performance Monitoring:	Key output specification requirements, method statements.
Records:	Helpdesk, procedures, escalation, performance targets, KPIs.
Audit:	Contractual information provisions and Government

	requirements.
Facilities Management / Maintenance guide:	Summary of services for end users, performance standards expected, how to report failure: Summary of any other key features of the Contract not covered above.

74.1.5 update the Operating Manual within twenty (20) Business Days of:

- (a) any change to the Agreement made under the Change Protocol that impacts on the information provided within the Operating Manual;
- (b) any change to its operating procedures that impacts on the information provided within the Operating Manual; and
- (c) Services Commencement;

74.1.6 within twenty (20) Business Days following Services Commencement, provide to the Authority a final and complete version of the Building Manual, the contents of the Building Manual to be to the reasonable satisfaction of the Independent Certifier.

74.2 The Contractor shall keep (and where appropriate to comply with clause 74.1 shall procure that the sub-contractors shall keep) books of account in accordance with best accountancy practice with respect to the Agreement showing in detail:

74.2.1 administrative overheads;

74.2.2 payments made to Sub-Contractors and to sub-contractors and any other operating costs;

74.2.3 capital and revenue expenditure;

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

74.2.5 and the Contractor shall have (and procure that the sub-contractors shall have) the books of account evidencing the items listed in clauses 74.2.1 to 74.2.4 available for inspection by the Authority (and any expert) upon reasonable notice, and shall provide a copy of these to the Authority as and when requested.

Maintenance of Records

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

74.3.1 a full record of all incidents relating to health, safety and security which occur during the term of the Agreement;

74.3.2 full records of all maintenance procedures carried out during the term of the Agreement;

74.3.3 full records of all staff matters including turnover, pay and disciplinary matters; and

74.3.4 full records of Helpdesk data (including providing a live link direct access),

and the Contractor shall have the items referred to in clauses 74.3.1 to 74.3.4 available for inspection by the Authority upon reasonable notice, and shall provide copies of these to the Authority as and when requested from time to time.

Auditor

- 74.4 The Contractor shall permit records referred to in this clause to be examined and copied from time to time by the Authority's auditor and their representatives and other representatives of the Authority.

Retention

- 74.5 The records referred to in this clause 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.

Termination

- 74.6 Upon termination of the Agreement, and in the event that the Authority wishes to enter into another agreement for the operation and management of a project the same as or similar to the Project, the Contractor shall (and shall ensure that the sub-contractors will) comply with all requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Project.

Further Provisions

- 74.7 The Contractor shall:
- 74.7.1 provide to the Authority on 31 March, 30 June, 30 September and 31 December each year a document listing all information provided by it to the Senior Lenders during the preceding three (3) month period and, at the request of the Authority, provide to the Authority any information provided by it to the Senior Lenders during the term of the Agreement and any other information relating to the Project that the Authority may require including, if requested, any Technical Adviser's report;
 - 74.7.2 provide to the Authority copies of its annual report and accounts within twenty (20) Business Days of publication;
 - 74.7.3 provide to the Authority a copy of the Senior Credit Agreement at Financial Close and (as the same may be amended) within twenty (20) Business Days of any amendment thereto;
 - 74.7.4 provide to both the Authority and HM Treasury (addressed to PF2@hmtreasury.gsi.gov.uk) or such other address as HM Treasury may notify to the Contractor from time to time) the following information: 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 Lender's Base Case at Financial Close 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 each 31 March and 30 September throughout the Contract Period (or such other six (6) month reporting cycle as the Parties may agree);
 - 74.7.5 promptly upon the occurrence of a Financing Default notify the Authority of such Financing Default;

- 74.7.6 use all reasonable endeavours to assist the Authority in its preparation of any report required by the Department for Communities and Local Government or HM Treasury from time to time;
- 74.7.7 provide all information required by the Authority in connection with Changes in accordance with the provisions of the Change Protocol; and
- 74.7.8 provide regular Project Reports in accordance with the Output Specification which are clearly written and include analysis of utility consumption, key performance indicators, 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.

Interim Project Report

- 74.8 The Authority may, in the circumstances referred to in clause 74.7.5 above (regardless of whether the Senior Lenders have exercised any enforcement or similar rights under the Senior Financing Agreements) require the Contractor to provide an Interim Project Report and to attend, and use all reasonable endeavours to ensure that the Senior Lenders attend, such meetings as the Authority may convene to discuss such Interim Project Report and the circumstances giving rise to it.
- 74.9 The obligations:
 - 74.9.1 contained in this clause 74 (Contractor's Records and Provision of Information);
 - 74.9.2 contained in clauses 23.3 (**Life Cycle Works and Planned Maintenance**) and the Cyclical Maintenance and Replacement Programme spend;
 - 74.9.3 to provide a Joint Insurance Cost Report under paragraph 2 (Insurance Review) of schedule 23 (Insurance Premium Risk Sharing);
 - 74.9.4 to provide information relating to a proposed Refinancing pursuant to clause 80 (Refinancing);
 - 74.9.5 to provide ownership information pursuant to clause 5.2.8 (Contractor Undertakings); and
 - 74.9.6 to provide information pursuant to the Change Protocol,

constitute part of the Service requirements in accordance with the Output Specification and any breach of them by the Contractor shall be a failure in performance of the Service triggering deductions in accordance with the Payment Mechanism.

74.10 Third Party Rights

Save in respect of HM Treasury's rights pursuant to clause 74.7.4 of this Agreement and subject to clause 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. This clause does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.

75 Data Protection

75.1 General

75.1.1 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.

75.1.2 The Contractor and any sub-contractor shall only undertake processing of Personal Data reasonably required in connection with the Works and/or the Services and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

75.2 No Disclosure

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

- (a) 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
- (b) to the extent required under a court order,

provided that disclosure under clause 75.2.1(a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 75.2.1 and that the Contractor shall give notice in writing to the Authority of any disclosure of Personal Data which either the Contractor or a sub-contractor is required to make under clause 75.2.1(b) immediately upon becoming aware of such a requirement.

75.2.2 The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

75.2.3 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the sub-contractors referred to in clause 75.2.2. Within twenty (20) Business Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

75.3 Indemnity by Contractor

The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this clause 75 (Data Protection) by the Contractor and/or any act or omission of any sub-contractor.

76 Interest on Late Payment

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Agreement is not paid within five (5) Business Days of the due date, it shall bear interest

thereon at the Prescribed Rate from the due date (whether before or after any judgment) until actual payment and it is agreed between the parties that the Prescribed Rate and the provisions of this Agreement relating to the payment of compensation on termination of this Agreement following the occurrence of an Authority Default provide the Contractor with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

77 Co-operation

The Contractor shall co-operate fully and in a timely manner with any reasonable request from time to time of any auditor (whether internal or external) of the Authority or the Ombudsman to provide documents, or to procure the provision of documents, relating to the Project, and to provide, or to procure the provision of, any oral or written explanation relating to the same.

78 Local Government (Contracts) Act 1997

78.1 Certification Requirements

The Certification Requirements are intended to be satisfied by the Authority with respect to this Agreement and the Direct Agreement before the end of the period relating to each agreement within which the Certification Requirements must be satisfied for the agreement to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.

78.2 Contractor's Consent

The Contractor hereby consents to the issue by the Authority of certificates under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Agreement and the Direct Agreement.

78.3 Failure to Issue a Certificate

If a certificate is not issued by the Authority pursuant to clause 78.2 (Contractor's Consent) within six (6) weeks of the date of this Agreement then the Contractor shall be entitled by giving notice in writing to the Authority within five (5) Business Days of the Authority failing to issue such a certificate to terminate this Agreement, whereupon the Authority shall pay to the Contractor an amount equal to the compensation that would be payable in accordance with clause 44 (Compensation on Termination for Authority Default/Voluntary Termination) and on termination for Authority Default pursuant to clause 37.3 (Termination on Authority Default).

78.4 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 10 (Relevant Discharge Terms).

79 Governing Law and Jurisdiction

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in the accordance with the laws of England and Wales. Subject to clause 60 (Dispute Resolution), the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

80 Refinancing

80.1 Requirement for Authority Consent

The Contractor shall obtain the Authority's prior written consent to any Qualifying Refinancing and both the Authority and the Contractor shall at all times act in good faith with respect to:

80.1.1 any Refinancing; or

80.1.2 any potential or proposed Refinancing under clause 80.9.

80.2 Share of Gain

The Authority shall be entitled to receive:

80.2.1 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; and

80.2.2 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:

(a) for a Refinancing Gain from £1 to £1 million, a 50% share;

(b) for a Refinancing Gain of £1 million up to £3 million, a 60% share; and

(c) for a Refinancing Gain in excess of £3 million a 70% share.

80.3 No Withholding or Delay

The Authority shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain. than that specified in clause 80.2.

80.4 Contractor Details

The Contractor shall promptly provide the Authority with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing (whether that Refinancing is a Qualifying Refinancing or not).

80.5 Receipt of Gain

The Authority shall have the right to elect to receive its share of any Refinancing Gain (including any Margin Gain) as:

80.5.1 a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;

80.5.2 a reduction in the Unitary Charge over the remainder of the Contract Period; or

80.5.3 a combination of any of the above.

80.6 **Method of Calculation**

The Authority and the Contractor will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain (including any Margin Gain) and payment of the Authority's share of the Refinancing Gain (taking into account how the Authority has elected to receive its share of the Refinancing Gain under clause 80.5 (Receipt of Gain)). If the parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the dispute shall be determined in accordance with the Dispute Resolution Procedure.

80.7 **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 Authority will be paid to the Authority by the Contractor within 20 Business 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.

80.8 **Notifiable Financings**

Without prejudice to the other provisions of this clause 80(Refinancing) the Contractor shall:

80.8.1 notify the Authority of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same; and

80.8.2 include a provision in the Financing Agreements (other than Subordinated Financing Agreements) whereby the Contractor is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements (other than Subordinated Financing Agreements).

80.9 **Authority Right to Request Refinancing**

80.9.1 If the Authority (acting reasonably) considers the funding terms generally available in the market to be more favourable than those reflected in the Financing Agreements (other than Subordinated Financing Agreements), the Authority may, by notice in writing to the Contractor, require the Contractor to request potential funders to provide terms for a potential Refinancing (a **Refinancing Notice**).

80.9.2 The Refinancing Notice shall set out in reasonable detail the grounds upon which the Authority believes such funding terms to be available. The Contractor and the Authority shall meet to discuss the Refinancing Notice within twenty eight (28) Business Days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. The Authority shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten (10) Business Days following the meeting.

80.9.3 If the Authority serves a Refinancing Notice which is not withdrawn pursuant to clause 80.9.2, then the Contractor shall:

- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;

- (b) 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 80.7; and
- (c) either:
 - (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Authority (i) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of the Authority that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in clause 80.9.3(a) 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
 - (ii) 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 80.9.3(a), provide evidence to the reasonable satisfaction of the Authority for such belief and evidence to the reasonable satisfaction of the Authority that the Contractor has complied with its obligations in clause 80.9.3(a) and clause 80.9.3(b)

80.9.4 Following receipt of the information referred to in clause 80.9.3(c)(i), the Authority shall (in its absolute discretion) either:

- (a) instruct the Contractor to implement the proposed Refinancing; or
- (b) instruct the Contractor to discontinue the proposed Refinancing

provided that if the Authority reasonably considers that the requirements of clause 80.9.3(c)(i) have not been satisfied, the Authority may require the Contractor to satisfy its obligations under clause 80.9.3(c)(i) whereupon the provisions of clause 80.9.3 and clause 80.9.4 shall apply as if the Authority had served a Refinancing Notice.

80.9.5 If the Authority instructs the Contractor to implement the proposed Refinancing:

- (a) the Contractor shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented;
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of clause 80.1 to 80.8 shall apply.

80.9.6 If:

- (a) the Authority instructs the Contractor to discontinue the potential Refinancing pursuant to clause 80.9.4(b); or
- (b) the requirements of clause 80.9.3(c)(ii) are satisfied,

then, the Authority shall reimburse the Contractor for the reasonable and proper professional costs incurred by the Contractor in relation to the potential Refinancing, such costs to be paid to the Contractor by the Authority within twenty eight (28) days after receipt of a valid invoice in respect of such amount.

80.9.7 Any costs paid pursuant to clause 80.9.6 above shall not include any internal management costs incurred by the Contractor except insofar as:

- (a) it can be demonstrated to the reasonable satisfaction of the Authority that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties; and
- (b) the Authority has, by prior written agreement, approved the use of such internal management resource.

80.9.8 The Authority shall be entitled to issue a Refinancing Notice under clause 80.9.1 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 80.9.2 has been issued for the purpose of this clause 80.9.8.

81 Sole Remedy and Common Law Rights

81.1 Common Law Rights for the Contractor

Without prejudice to any entitlement of the Contractor:

81.1.1 to specific performance of any obligation under this Agreement; or

81.1.2 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.

81.2 Sole Remedy

Subject to:

81.2.1 any other express right of the Authority pursuant to this Agreement; and

81.2.2 the Authority's right to claim, on or after termination of this Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Agreement by the Contractor, save to the extent that the same has already been recovered by the Authority pursuant to this Agreement or has been taken into account to calculate any compensation payable by the Authority pursuant to clauses 42 (Compensation on Termination for Force Majeure), 43 (Compensation on Termination for Contractor

Default), 44 (Compensation on Termination for Authority Default/Voluntary Termination) or 45 (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches);

the sole remedy of the Authority in respect of a failure to provide the Services in accordance with this Agreement shall be the operation of Schedule 4 (Payment Mechanism).

81.3 No Restriction on Discretionary Remedies

Nothing in clause 81.2 (Sole Remedy) shall prevent or restrict the right of the Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

82 Rights and Remedies

Where this Agreement provides specifically for any right of a party on breach of the other party's obligations under this Agreement, the entitlement to exercise (and conferring of) that right will be to the exclusion of all other rights (other than available equitable remedies including injunction or their equivalent in any other jurisdiction) of the first mentioned party howsoever arising at common law, under statute or in equity in respect of the circumstances constituting such breach.

83 Capacity

Save as otherwise expressly provided, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Authority to the Contractor.

84 Counterparts

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

85 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.

86 Charitable Surplus

The Parties shall comply with the provisions of Schedule 36 (Charitable Surplus).

This Document is executed as a deed and delivered on the date stated at the beginning of this Deed.

The Common Seal of)
Kingston-Upon-Hull City Council)
was affixed to this deed in the presence of)

.....
Authorised Signatory

Executed and delivered as a deed by **Riverside**)
Care and Support Limited acting by two)
directors or by a director and its secretary)

.....
Director

.....
Director/Secretary