

APPENDIX D

CONFORMED COPY OF A DEED DATED 28 NOVEMBER 2002 AS AMENDED BY  
DEED DATED \_\_\_\_\_ 2007

CONSOLIDATED AGREEMENT – 26th OCTOBER 2007

BARNSLEY METROPOLITAN BOROUGH COUNCIL

- and -

BERNESLAI HOMES LIMITED

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**AGREEMENT FOR HOUSING MANAGEMENT  
AND OTHER SERVICES  
AND DELEGATION OF CERTAIN COUNCIL FUNCTIONS**

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This is the conformed copy of the agreement for housing management and other services and delegation of certain council functions dated 28<sup>th</sup> November 2002 and made between Barnsley Metropolitan Borough Council and Berneslai Homes Limited as varied by a Deed of Variation dated \_\_\_\_\_ 2007.

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Initialed on behalf of Barnsley Metropolitan Borough Council

.....  
Initialed on behalf of Berneslai Homes Limited

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**THIS AGREEMENT** is made the 28<sup>th</sup> day of November 2002 and is extended and revised by a deed dated 2007

**BETWEEN:**

- (1) **BARNESLEY METROPOLITAN BOROUGH COUNCIL** of (“**the Council**”); and
- (2) **BERNESLAI HOMES LIMITED** whose registered office is situated at Springfield House, Springfield Street, Barnsley, S70 6HH (“**the Organisation**”).

**WHEREAS**

- (A) The Council is the local housing authority for its area pursuant to Sections 1 and 2 of the Housing Act 1985 and pursuant to the functions contained in that Act provides housing accommodation and exercises general management, regulation and control of its housing accommodation.
- (B) Pursuant to Section 27 of the Housing Act 1985 and with the approval of the Secretary of State and pursuant also to Section 2 of the Local Government Act 2000 and all other enabling powers the Council agrees that a third party exercises such of the Council’s functions and undertakes such activities pursuant to such functions as are herein specified.
- (C) The Council and the Organisation have agreed that the Organisation shall provide and the Council shall co-operate with it in providing the Services in the manner and upon the terms hereinafter set out.

**IT IS AGREED** as follows:

## **PART A - PARTNERING IN DELIVERY BETWEEN THE ORGANISATION AND THE COUNCIL**

### **1 DELIVERY PLANS**

The Organisation shall deliver the Delivery Plan which is in the current format as set out in Annex1. From time to time the format of the plan can be changed by mutual agreement between the Council and the Organisation. The Delivery Plan and the HRA Budget Report together:

- 1.1 sets all the outputs of the Organisation, the key performance requirements of the Services and includes the performance standards expected;
- 1.2 includes the overall strategy of the Organisation and how the Organisation will deliver the key strategic goals of the Council and the community the Council represents;
- 1.3 details the financial and staffing resources required to enable the Organisation to deliver the Delivery Plan and perform the Services with skill, care and diligence.

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

The Services to be carried out by the Organisation are set out in the Delivery Plan and are part of an important relationship between the Council and the community it represents. The Organisation through the Delivery Plan will ensure that all its policies and activities support the objectives of all relevant Council strategies of which the Organisation has been informed (“the Strategies”) which are entitled, relate to or are the equivalent of the items as contained in the Council’s budget and policy framework as set out within the Council’s constitution.

For such purposes the Organisation shall:

- 2.1 ensure all staff are trained in and understand the Strategies;



- 2.2 provide information to help the Council up date and develop the Strategies;
- 2.3 demonstrate in the Annual Delivery Plan and HRA Budget how resources will be used to meet the objectives of the Strategies.

### **3 EQUAL OPPORTUNITIES**

- 3.1 The Council has a strong commitment to equal opportunities. In providing the Services the Organisation shall operate equal opportunity policies and procedures in all aspects of its work. By implementing these policies and procedures the Organisation shall ensure that it does not discriminate against any person or other organisation on the grounds of race, ethnic origin, disability, nationality, gender, sexuality, age, class, appearance, religion, responsibility for dependants, unrelated criminal activities, being HIV positive or having AIDS, or any other matter which causes a person to be treated with injustice.
- 3.2 The Organisation shall follow the best professional practice in relation to equal opportunities and in particular (but without limitation) shall comply with:
  - 3.2.1 all relevant legislation as well as statutory and other official guidance and codes of practice;
  - 3.2.2 the Council's own equal opportunities policies as the same may be adopted and amended from time to time.
- 3.3 The Organisation shall adopt and apply an equal opportunity policy which shall be equivalent or broadly similar to the Council's own equal opportunity policy at the Commencement Date. The application of this policy must include how the Organisation:
  - 3.3.1 employs and recruits staff;
  - 3.3.2 deals with board membership and other issues arising from its constitution;
  - 3.3.3 handles hate incidents;
  - 3.3.4 missions contractors, consultants and agents;

3.3.5 delivers its services.

3.4 The Organisation shall provide such information as the Council may reasonably request for the purpose of assessing the Organisation's compliance with this Clause 3.

#### **4 TENANT INVOLVEMENT**

4.1 The Council has a partnering relationship with its tenants and leaseholders and to further this relationship the Organisation will honour the Tenant Compact. The Delivery Plan will include sufficient resources to ensure that the objectives of the Tenant Compact are met.

4.2 The Tenant Compact will be amended from time to time so far as necessary to comply with all statutory requirements and other official guidance issued from time to time and follow best professional practice.

4.3 The Tenant Compact objectives will be reviewed and consulted upon in a timescale mutually agreed with the recognised Tenants groups and sufficient resources will be provided for in the Annual HRA Budget Report to deliver these objectives or the extent of the same approved by the Council's Representative.

4.4 The Tenant Compact will include strategies for involving all tenants, leaseholders and residents as well as 'difficult to reach' groups and those tenants who do not normally get involved in the management of their homes.

4.5 The Annual HRA Budget Report, Capital Report and Delivery Plan will be provided to the Council's Representative for consideration and approval and on receipt of approval a summary shall be agreed and made available to tenants and leaseholders through the Organisation's normal communication channels.

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

### **5 BEST VALUE**

- 5.1 The Council is subject to Best Value and must make arrangements to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness. In discharging its responsibilities under this Agreement the Organisation must make arrangements to secure continuous improvement in the way its objects are achieved and the Services are performed having regard to a combination of economy, efficiency and effectiveness.
- 5.2 The Council following each Service Review shall consider whether the Council through the Organisation should continue to exercise a particular function or perform a particular service and will consider the level and the way in which it should exercise that function or service. The Council will also consider its objectives and strategies in relation to that function. Any variations to this Agreement following such consideration shall be effected in accordance with Clause 61.
- 5.3 The Annual Performance Plan shall be agreed and the Service Reviews shall be carried out in accordance with Clause 7.
- 5.4 The Council shall notify in writing to the Organisation any changes to significant Key Performance Indicators relating to the services within twenty (20) Working Days of any change being published by DCLG and / or the Audit Commission and / or the Council (as appropriate) which have a material affect on service delivery. The Organisation shall undertake or refrain from undertaking such actions as the Council shall request to assist the Council to comply with Best Value including without limitation:
- 5.4.1 supporting and assisting the Council in meeting Best Value in respect of the services including the preparation by the Council of Best Value Performance Plans and Best Value Reviews;
  - 5.4.2 complying with requests for information, data or other assistance made by the Council in pursuance of Best Value

including, without limitation to:

- .1 enabling the Council to prepare any Best Value Performance Plan;
  - .2 enabling the Council to conduct a Best Value Review;
  - .3 facilitating the audit of the Council's Best Value Performance Plan by the Council's auditor pursuant to Section 7 LGA 1999;
  - .4 facilitating the Council preparing any statement, in response to a Council's auditors report, pursuant to Section 9 LGA 1999;
  - .5 facilitating any inspection undertaken with a view to verifying the Council's compliance with Best Value pursuant to Sections 10 and 11 LGA 1999;
  - .6 assisting the Council in relation to any action taken by the Secretary of State under Section 15 LGA 1999; and
  - .7 enabling the Council to comply with the Publication of Information Direction 1999; and
- 5.4.3 attending at such meetings in the course of complying with Clauses 6 to 10 inclusive and Clause 32 as the Council may reasonably require, including meetings with the Council's auditor and the Audit Commission.

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

### **6 FUTURE DELIVERY PLANS**

- 6.1 The Organisation shall provide to the Council's Representative by 31st October each year an initial draft of the Annual Sections of the Delivery Plan, and a five year financial business plan. The Organisation shall also provide to the Council's Representative an Annual HRA Budget Report and Capital Programme Proposals at times set by the Council (acting reasonably) to meet the Council schedule and Government budget submission deadlines and in any event no later than 24 December each year.
- 6.2 The Delivery Plan will include an action plan setting out the Organisation's suggested measures that might be taken by the Organisation, the Council or other organisations further to improve the

Services PROVIDED THAT against any measure which it considers might be taken by the Organisation itself, the Organisation shall set out whether the implementation of such measure would result in any upward or downward variation of the Delivery Plan if the measure were to be a variation under the provisions of Clause 61.

- 6.3 When submitting the draft of the Annual Sections of the Delivery Plan each year to the Council's Representative the Organisation shall make suggestions for possible improvements in or development of the Services. The Council will consider any such suggestions but it will be under no obligation to adopt any or all of them.
- 6.4 The Council shall give due consideration to the draft Delivery Plan and shall within forty (40) Working Days of receipt of the Annual Sections of the Delivery Plan notify the Organisation as to whether such sections are agreed.
- 6.5 If the Council shall notify the Organisation that the draft Delivery Plan is not acceptable, it shall further notify the Organisation of any changes required.
- 6.6 Senior Officers of the Council and any other appropriate agency or organisation which the Council deems appropriate to attend, will meet with nominated Board Members of the Organisation and the Chief Executive of the Organisation within thirty (30) Working Days of the receipt by the Council of the Annual Section of the said draft delivery Plan to review the draft Delivery Plan and to review the previous year's performance against the targets set out in that year's Delivery Plan.  
The draft Delivery Plan will outline the tenant consultation process for consideration of the plan for the year to which it relates.
- 6.7 There shall be a series of Delivery Plan meetings between senior officers of the Council, the Chair of the Tenant Representative Body and other organisations or agencies as the Council deems appropriate to attend including nominated Board Members of the Organisation and the Chief Executive of the Organisation (the "Delivery Plan Meetings").

The Delivery Plan Meetings will take place once every three months (or more frequently if required by other provisions of this Agreement or otherwise reasonably requested by either the Council or the Organisation).

- 6.8 Where the Council is not satisfied with the Organisation's performance following the review in Clause 6.4 the Council shall be entitled to issue instructions to the Organisation to implement any measures which the Council may deem necessary to perform the current Delivery Plan. These measures will be reflected so far as necessary in the draft Delivery Plan.
- 6.9 If the Organisation does not so agree such changes the changes notified by the Council shall be deemed to be incorporated as modifications to the draft Delivery Plan and the draft Delivery Plan as so modified shall be the current Delivery Plan.
- 6.10 The Council will use the relevant part of the Delivery Plan in compiling the Council's own Housing Revenue Account business plan and in conducting any of its own best value reviews.
- 6.11 In the event that notwithstanding any measures taken pursuant to this Clause the Organisation continues to fail to demonstrate that the Agreement and the Services represent best value the Council shall be entitled if necessary to terminate this Agreement.
- 6.12 There shall be one formal meeting each year to which the elected members of the Council, Board Members of the Organisation and nominees of the relevant tenant representative body shall be invited to discuss that year's Delivery Plan and review the Organisation's performance.

## 7 THE ANNUAL PERFORMANCE OUT-TURN REPORT

- 7.1 Throughout the Contract period the parties shall work together to ensure that the Agreement and the Organisation's performance of the

Services represents value for money and best value generally and achieves continuous improvement for the benefit of the Council.

7.2 In addition to any requirements in the Delivery Plan Format the Organisation's Annual Performance Out-turn Report shall contain the following matters:

7.2.1 an analysis of performance against the Organisation's objectives in respect of the Services;

7.2.2 an analysis of the Service throughout the previous twelve months, focusing on those areas which were successful and unsuccessful;

7.2.3 an identification in the Organisation's view of the reason for the successes and failures referred to in Clause 7.2.2 recognising that (a) some of the matters may be due to the Organisation's performance of the Services (or that of its sub-contractors, staff or agents), (b) others may be due to the actions or omissions of the Council, other companies engaged by the Council and / or the Council's staff and (c) other matters may be due to external or other circumstances.

7.2.4 performance targets (based on best Value Performance Indicators as a minimum) for the out-turn year compared with performance stated in the Delivery Plan for the year;

7.2.5 progress on any ALMO Service Reviews and a summary of any previous ALMO Services Reviews and their relationship to relevant Best Value Reviews undertaken by the Council;

7.2.6 a summary of complaints activity and key areas that may require policy or budgetary review;

7.2.7 any other matters specified by the Secretary of State under Section 6 of the Local Government Act 1999 in connection with the relevant parts of the Best Value Performance Plan;

7.2.8 an action plan as described in Clause 6.2

7.3 The submission of the Annual Performance Out-turn Report by the Organisation to the Council as part of the Delivery Plan shall be without prejudice to any monitoring or performance review which may be carried out by the Council under any of the other terms of the

Agreement (including but not limited to Clause 7.5)

- 7.4 The Council will use the Annual Performance Out-turn Report in compiling the Council's own annual performance report and in conducting any Best Value Reviews (whether relating wholly or partly to housing or cross cutting or otherwise)
- 7.5 The Organisation shall carry out any measure reasonably required by the Council or recommended by the Secretary of State or the Housing Regulator in order to achieve best value for money. The Organisation shall co-operate and assist fully with the Council, the Secretary of State and the Housing Regulator during any Best Value Inspection.
- 7.6 Any disputes between the parties in relation to this Clause 7 may be referred by either party to the dispute resolution procedure in accordance with clause 65
- 7.7 There shall be one formal meeting each year to which the elected members of the Council, Board members of the Organisation and nominees of the relevant Tenant Representative Body shall be invited to discuss that year's Annual Performance Out-turn Report and review the Organisation's performance.

## **8. SERVICE REVIEWS**

- 8.1 According to any timetable set out in the Delivery Plan the Organisation from time to time shall conduct Service Reviews which enable the Organisation and the Council to:
  - 8.1.1 analyse whether the Organisation should be providing the Services and the level at which the Services are provided;
  - 8.1.2 analyse the Organisation's objectives in providing the Services;
  - 8.1.3 assess the Organisation's performance in providing the Services by reference to any relevant Performance Indicators;
  - 8.1.4 consult with the Council and other appropriate best value authorities (as defined in Section 1 of the Local Government Act 1999) and all other appropriate stakeholders and interested parties about the provision of the Services;



8.1.5 assess the competitiveness of the Organisation's performance in providing the Services by comparison with similar service providers; and

8.1.6 address any other matters specified and any guidance issued by the Secretary of State under Section 5 of the Local Government Act 1999

8.2 Without prejudice to the specific requirements of Clause 8.1 the Organisation shall assist the Council in conducting any and all of the Council's service reviews (which relate to wholly or partly to housing, the ALMO or are crosscutting or otherwise)

## **9 PERFORMANCE INDICATORS**

The Organisation shall provide to the Council when requested such information and data as are necessary to establish whether or to what extent the Organisation's performance of the Services matches the Key Performance Indicators.

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

10.1 The Organisation shall keep and maintain all necessary information and shall provide all necessary assistance to enable the Council to complete all necessary returns of housing statistics and other information relating to the Services including but without limitation:

10.1.1 returns to Government or other appropriate regulatory organisations including Companies House;

10.1.2 Housing Revenue Subsidy claim forms;

10.1.3 Housing Investment Programme submissions;

10.1.4 returns to the Chartered Institute of Public Finance and Accountancy;

10.1.5 information required by the Audit Commission (including, without limitation information to be provided in connection with

Clause 34 [Audits];

10.1.6 information required for the purposes of compliance with Best Value Reviews, Best Value Performance Plans, audits and inspections and any other such performance-related information which may be required by the Council from time to time;

10.1.7 information to be provided in connection with any investigation by the District Auditor, Ombudsman or similar persons or bodies as described in Clause 33.1 [Provision of Information]; and

10.1.8 information to be provided to the Housing Corporation.

10.2 The Organisation shall supply the Council with such assistance and information as the Council may reasonably require to enable it to allocate such expenditure as the Council may incur under this Agreement between its general fund and Housing Revenue Accounts.

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

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

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

The Organisation will be a “strategic partner” of the Council and a user of the Council’s services. The views of the Organisation as a stakeholder, a service user and service provider will be essential in the development of the Council’s corporate strategies and reviews of services. The Organisation will respond promptly to consultation requests on such corporate issues and will provide information as required.

### **12 REPRESENTING THE COUNCIL IN RELATED OR “PARTNERSHIP” ACTIVITY**

The Organisation will at the request of the Council’s Representative or in pursuit of Delivery Plan objectives work with other agencies, bodies and

organisations in partnerships, forums and projects. This might include (but not be limited to) area and other consultative forums, scrutiny, community safety meetings, regeneration partnerships and social services case conferences.

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

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

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

13.2 Subject to Clause 13.1 the Organisation shall carry out all other consultations or negotiations with the said statutory or voluntary bodies and shall respond to any enquiries from such bodies in relation to the circumstances of individual tenants or applicants for accommodation on such a basis (as to confidentially and otherwise) as is appropriate and consistent with both the Organisation's and the Council's legal obligations and duties.

### **14 CONSULTATION WITH TENANTS AND LEASEHOLDERS**

Without prejudice to its continuing obligations under Section 105 of the Housing Act 1985 the Council shall whenever reasonably requested by the Organisation to do so or otherwise as the Council shall deem appropriate in connection with the Services consult with its tenants and leaseholders about the subject-matter of this Agreement.

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

### **15 FUNCTIONS DELEGATED**

The functions and activities pursuant to those functions delegated by the Council for the purposes of this Agreement shall be those functions or activities identified in Annex 2 as the responsibility of the Organisation.

## **16 PROVIDING THE SERVICES**

- 16.1 In consideration of the Management Fee the Organisation shall at all times perform the Services to the satisfaction of the Council's Representative in accordance with the duty (hereby acknowledged) on the Organisation to perform the Services with all due skill, care and diligence and in accordance and otherwise in compliance with:
- 16.1.1 the Delivery Plan and in particular (but without limitation) the key performance requirements of the Services set out therein;
  - 16.1.2 any current Key Performance Indicators;
  - 16.1.3 Council Guidelines and in particular (but without limitation) those relating to customer care;
  - 16.1.4 any reasonable instructions issued to the Organisation by the Council's Representative pursuant to or in connection with the Agreement;
  - 16.1.5 all applicable legislation;
  - 16.1.6 in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council;
  - 16.1.7 in good and full co-operation with any other company, officer or consultant engaged by the Council to carry out related or relevant works or services on behalf of the Council; and
  - 16.1.8 in a manner which has regard to the interests and welfare of tenants, leaseholders and/or residents and the management and maintenance of the Dwellings to a high standard.
- 16.2 The Organisation shall inform the Council's Representative promptly of and confirm in writing if the Organisation is unable or fails to provide the Services or any substantial or material part thereof, or if the Organisation is aware of anything of whatsoever nature and whether or not the result of any act or omission on the part of the Council which prevents or hinders or which may prevent or hinder the Organisation from complying with the Agreement giving details of the circumstances, reasons and likely duration. The provision of information under this Clause shall not in any way release or excuse the Organisation from any of its obligations under the Agreement.
- 16.3 Should the Organisation require any further instruction or information which is necessary for or in connection with the provision of the

Services, the Organisation shall make a written application in adequate detail for the same to the Council's Representative.

- 16.4 The Organisation shall at all times during the provision of the Services allow the Council's Representative and such persons as may from time to time be nominated by the Council's Representative access to:
- 16.4.1 all offices and work places of the Organisation for the purpose of monitoring and inspecting work being performed in order to provide the Services;
  - 16.4.2 all offices and work places of the Organisation for the purpose of inspecting any or all records and documents in the possession, custody or control of the Organisation in connection with the provision of the Services;
  - 16.4.3 any personnel or agents of the Organisation for the purpose of interviewing such persons in connection with the provision of the Services;
  - 16.4.4 technology, resources, equipment, systems, and procedures used or proposed to be used in connection with the provision of the Services.
- 16.5 Notwithstanding the Organisation's own standing orders and approved financial codes of practice, the Organisation shall at all times when acting on behalf of the Council in providing Services under this Agreement comply with the Council's Standing Orders and Financial Regulations, associated Codes of Practice and terms of reference/delegations as the same may from time to time be amended, varied or replaced by agreement between the parties.
- 16.6 If the Organisation is unable or fails to provide the Services or any part thereof in accordance with the requirements of Clause 16.1 the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby shall (if and to the extent the Council so determines) be reflected in a variation to the then Delivery Plan. The Council's rights under this Clause 16.6 shall be without prejudice to any other rights or remedies which it may possess.

- 16.7 The Organisation shall as may be necessary or desirable co-operate, liaise with, and co-ordinate its activities with those of any other companies or any company or sub-contractor employed directly or indirectly by the Council and shall provide the Services in harmony with and at no detriment to any other services provided by or on behalf of or to the Council. In particular (but without limitation) the Organisation shall take all practicable steps to ensure that at the expiry or earlier termination of this Agreement any subsequent company or the Council's own employees can immediately provide services to the Council on the same basis and to the same standard as set out herein.
- 16.8 The Organisation shall maintain such quality management systems and procedures as are appropriate to enable the Organisation to deliver the Services to the agreed standards. The Organisation shall afford the Council full access to such systems personnel, records and procedures for audit or other purposes. In the event that the Organisation fails to comply with this Clause the Council shall be entitled to:
- 16.8.1 establish its own quality management systems and procedures; and
- 16.8.2 require the Organisation to use the same,
- 16.9 The Organisation from its own resources shall join and co-operate with the Council in such tenant consultation and liaison as the Council may reasonably require from time to time.
- 16.10 In addition to the agreed procedures for normal Organisation's office hours and availability of staff notified by the Organisation to the Council, the Organisation will ensure that in the event of any emergency or significant unforeseen difficulty occurring with respect to the delivery of the Services appropriate Organisation personnel will advise the Council's Representative as a matter of urgency and will continue to take responsibility (in line with the Organisation's business continuity plan from time to time) for the situation until it is agreed by the Council's Representative that responsibility may be handed over to another agency or authority.

16.11 The Organisation shall not, whether itself, or by any director to be engaged in the provision of the Services, or by any person employed by it to provide the Services, solicit or accept any gratuity, tip or any other form of money or take any reward or make any unauthorised charge for any part of the Services.

16.12 The Organisation shall not permit its interests to interfere or conflict with its duty (which the Organisation hereby acknowledges) to provide the Services in the utmost good faith.

16.13 The Organisation shall follow as detailed within the Annual Delivery Plan the Council protocol in relation to enquiries from Council Members about Tenants' and leaseholders' issues.

16.14 The Organisation shall follow the Council's approved policy in respect of enabling or assisting any Tenants and leaseholders to acquire, or to acquire and enter into occupation of houses.

## **17 STATUTORY REQUIREMENTS**

17.1 Without prejudice to the particularity of other Clauses in this Agreement the Organisation shall comply with all statutory requirements to be observed and performed in connection with the Services.

17.2 The Organisation shall comply with the requirements of Regulations 4 to 7, 8, 9 and 10 of the Local Authorities (Companies) Order 1995 on the basis that it is a regulated company, controlled by the Council within the meaning of section 68 of the Local Government and Housing Act 1989.

## **18 VARIATIONS TO OCCUPANCY AGREEMENTS**

The Organisation shall not vary or accept or acquiesce in any variation to the Council's form of secure or introductory tenancy agreement, long residential lease or conditions or any handbook or other provisions incorporated therein without the prior written consent of the Council provided by the Council's Representative.

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

- 19.1 The Organisation shall employ sufficient persons to ensure that the Services are provided at all times and in all respects in accordance with the Agreement.
- 19.2 The Organisation's personnel employed in and about the provision of the Services shall be properly and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise care in the execution of their duties and the Organisation shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services and in particular:
- 19.2.1 the task or tasks such persons have to perform;
  - 19.2.2 all relevant provisions of the Agreement;
  - 19.2.3 all the Council's Guidelines in relation to customer care (including those in relation to access to services, health and safety, risk management and business continuity planning);
  - 19.2.4 all relevant policies, rules, regulations, procedures, standards of the Council and Standing Orders, Financial Regulations and associated Codes of practice approved by the Council;
  - 19.2.5 all relevant rules not limited to procedures, statutory requirements and EU Directives concerning health and safety, risk management and business continuity planning including the Council's health and safety policy.
- 19.3 The Organisation shall carry out checks with the Criminal Records Bureau when it is appropriate to carry out such checks in respect of one of its employees or a prospective employee.
- 19.4 The Council's Representative shall, upon giving notice in writing have the power where he/she has good and sufficient reason to do so (but not unreasonably or vexatiously) to require the Organisation to remove from the provision of the Services or a specified part thereof any personnel of the Organisation specified in such notice, including the Organisation's Representative. The Organisation shall forthwith remove such personnel from the provision of the Services or the specified part thereof and shall immediately provide a replacement



unless the Council determines otherwise.

19.5 If the circumstances under which the Services are provided are such that any personnel of the Organisation are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) then the Organisation shall ensure that all personnel engaged in the provision of the Services shall provide information in accordance with the said Act and Order about convictions which would otherwise be spent under the provisions of the said Act. The Organisation shall disclose to the Council's Representative the names and addresses and sufficient information and as appropriate all convictions with the exception of minor offences under the Road Traffic Acts or the Road safety Acts for which a fine or a non-custodial penalty is imposed on its senior management team or of its personnel engaged in the provision of services to vulnerable clients to enable the Council to make or require the organisation to make proper checks. The Council may (but not unreasonably or vexatiously) require such personnel to be removed from the provision of the Services or a specified part thereof

19.6 The Council shall in no circumstances be liable either to the Organisation or to such personnel in respect of any cost, expenses, liability, loss or damage occasioned by any removal effected in accordance with Clauses 19.3 and 19.4.

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

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

20.1 The Organisation shall appoint its Chief Executive (or such other senior person it notifies in writing to the Council) as its representative

empowered to act on behalf of the Organisation for all purposes connected with the Agreement. Any notice, information, instruction or other communication given to the Organisation's Representative shall be deemed to have been given to the Organisation.

20.2 The Organisation shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of the person appointed as the Organisation's Representative and of any subsequent appointment.

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

20.4 The Organisation shall ensure that either the Organisation's Representative or a competent deputy, duly authorised by the Organisation to act on its behalf, is present at all work places of the Organisation, where work in connection with the Services is being carried out, and available to meet the Council's Representative at all reasonable times.

20.5 The Organisation shall provide and shall ensure that its personnel wear at all times, when engaged in the provision of the Services, identification (including photographic identification) and shall ensure that when requested to do so any personnel of the Organisation shall disclose their identity and status as personnel of the Organisation.

## **21 USE OF ASSETS**

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

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

- 21.3 All Assets employed by the Organisation in the performance of the Services at any time must be either owned, leased or hired by the Organisation pursuant to a contract of simple hire (and not hire purchase) (the "Hire Contract") the benefit of which contract must be capable of assignment by the Organisation to the Council or to an organisation nominated by the Council for the purpose of carrying out the Services (or any of them) so that the Services may be continued to be provided by a third party in the event of the termination of this Agreement for any reason.
- 21.4 The Organisation shall ensure that any such Hire Contract requires the owner of the relevant Assets to hire the Assets to the Council on the same terms as the Assets were hired to the Organisation save that the Council shall be entitled to permit the use of the Assets by any other body or person providing the Services (or any of them) or such other organisation providing the Services (or any of them) on behalf of the Council PROVIDED THAT the Council shall have served on the said owner after termination of this Agreement notice in writing requiring compliance with the said provision of the Hire Contract and upon the Council undertaking to pay all hire charges from the date of such notice.
- 21.5 The Organisation shall at all times be responsible for any necessary licensing and for the payment of all licensing fees, taxes and insurances as may be required in connection with the possession or use of all Assets employed in the provision of the Services.
- 21.6 The Organisation shall put, keep and maintain all Assets employed in the performance of the Services at all times in good and serviceable repair and in such condition as is required for the proper performance by the Organisation of its obligations under the Agreement.
- 21.7 All Assets and materials used by the Organisation shall conform to any applicable British Standard or European or international equivalent and when so requested the Organisation shall provide the Council with evidence to prove that such Assets and materials so

conform.

- 21.8 The Organisation shall permit the Council to inspect at any time any Assets or materials used or proposed to be used by the Organisation in the provision of the Services and the Organisation shall facilitate such inspections.
- 21.9 The Organisation shall only keep such potentially dangerous or hazardous materials or equipment on the Premises as are necessary for the provision of the Services and hold them in compliance with Control of Substances Hazardous to Health Regulations 2002 (and any associated / subsequent legislation and amendments to same).
- 21.10 At the expiry of the Term or upon termination of this Agreement (whichever shall first occur) the Council may serve a notice upon the Organisation requiring the Organisation to transfer free of charge to the Council or any other person or persons as may be specified in such notice (a) any and all Assets and materials used by the Organisation wholly or mainly in the performance of the Services and (b) the benefit of all contracts or agreements relating to the hire of such Assets.
- 21.11 Upon receipt of a notice under Clause 20.10 requiring the Organisation to transfer to the Council or any Council nominee the benefit of any contract or agreement for the hire of any Assets the Organisation shall forthwith execute all documents required to effect such transfer and shall deliver such Assets to the Council in such condition as it may be in at the date of the said notice.
- 21.12 Where the Organisation wishes to use the Council's insignia on the Assets it shall use the prescribed format of insignia notified to the Organisation from time to time by the Council. The organisation should not use or promote any devices, insignia or words on the Organisation's assets that would be defamatory to / or affect the reputation of the Council.
- 21.13 The Organisation shall maintain a register of assets for all Assets in

line with the company's Financial Regulations and Code of Practice.

## **22 CONTRACTS TO BE ADMINISTERED**

The Organisation shall act on behalf of the Council in administering or performing (as the case may be) the Contracts and shall:

- 22.1 comply with all reasonable requirements of the Council in respect of any or all of the Contracts;
- 22.2 monitor and review the performance of those carrying out the Contracts;
- 22.3 take all proper steps (but not including legal action or proceedings unless so required expressly in writing by the Council) to enforce the Contracts;
- 22.4 at the request of the Council supply all information including copies of any documents to the Council;
- 22.5 liaise with the Council in respect of any renewal or re-letting of any of the Contracts.

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

- 23.1 The Organisation shall not:
  - 23.1.1 assign the Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof;
  - 23.1.2 sub-contract the provision of the Services or any part thereof to any person without the previous written consent of the Council's Representative and which if given shall not relieve the Organisation from any liability or obligation under the Agreement and the Organisation shall be responsible for the acts, defaults or neglect of any sub-contractors, its employees or agents in all respects as if they were the acts, defaults or neglect of the Organisation itself.
- 23.2 The Organisation shall ensure that any sub-contractor permitted to perform any part of the Services under Clause 23.1.2 shall be fully

supplied with all necessary information about this Agreement (including any relevant instructions given by the Council's Representative to the Organisation).

- 23.3 The Organisation shall not carry out work for or provide services to third parties (other than the Council's tenants and Leaseholders in accordance with this Agreement) without the Council's prior written consent. Where such consent is considered by the Council the organisation shall provide a business case that incorporates a risk assessment, and is able to finance such services and it has in place effective cash flow arrangements.

The Council can, as part of the Annual delivery Plan arrangements, agree to limited annual trading of a specified value, (which can be amended from time to time by mutual consent), so long as an overarching business case as detailed above is in place.

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

- 24.1 The Council shall permit the Organisation to use for the purposes of providing the Services the Council's Computer Systems and/or Council's Software as set out in the Third Schedule subject to such terms, conditions and stipulations as are set out in the Third Schedule or as the Council may notify to the Organisation from time to time.
- 24.2 The Organisation shall use the Council's Computer Systems and/or Council's Software for the purposes of providing the Services and for the benefit of the Council and shall not under any circumstances (unless expressly authorised so to do by the Council's Representative) make use of the Council's Computer Systems and/or Council's Software for any third person or allow any other person to use the same
- 24.3 The Council will from time to time make available to the Organisation the technical specifications of the Council's Computer Systems and/or the Council's Software used by the Council in relation to the Undertaking.

- 24.4 Without prejudice to Clause 24.9 the Organisation shall take all practicable steps to safeguard those parts of the Council's Computer Systems and the Council's Software under the control or influence of the Organisation against unauthorised access, tampering or systems failure.
- 24.5 If and to the extent that the Organisation wishes to use any other computer systems and/or software in the provision of the Services and to the extent that interface with the Council's Computer Systems and/or Council's Software is necessary so to do the Organisation shall first obtain the written consent of the Council's Representative and if such consent is given it shall be a condition thereof that the Organisation shall:
- 24.5.1 ensure that such other computer systems and/or software are compatible with the Council's Computer Systems and/or the Council's Software and further will have no adverse affects on the Council's other computer systems and/or software and/or procedures;
- 24.5.2 ensure that any computer software it uses is properly licensed, and is properly authorised and co-operate with the Council in providing evidence to the Federation Afainst Software Theft in this regard.
- 24.5.3 comply with all relevant requirements of any supplier of the Council's Computer systems and/or the Council's Software.
- 24.6 If at any time the Organisation believes that changes modifications or updating to the Council's Computer Systems and/or Council's Software or to its other computer systems and/or software (as the case may be) are required or would assist in the provision of the Services the Organisation may make proposals for such changes to the Council's Representative and if the Council's Representative gives his consent to such changes it shall be a condition of such consent that:
- 24.6.1 all rights (including licences) in or arising from such changes shall become vested in the Council insofar as they relate to the

Council's Computer Systems and/or Council's Software; and  
24.6.2 the Council shall be entitled to require the Organisation on termination of this Agreement by expiry of time or otherwise either to take all necessary steps (including the assignment of licences) to vest the rights in such changes and all data and information in respect of the Services and all related matters in the Council or such other person as the Council may direct or to restore the Council's Computer Systems and/or the Council's Software to the status quo ante the said changes. The cost of such changes modifications or updating shall be reflected in the relevant part of the Annual HRA Budget Report and Delivery Plan as appropriate.

24.7 If at any time the Council has reason so to do (including but not limited to actual or threatened interference with or damage to the Council's Computer Systems and/or the Council's Software) the Council shall be entitled to require that the Organisation cease to use the Council's Computer Systems and/or the Council's Software and disconnect or otherwise separate the Organisation's own computer systems and/or software from the Council's Computer Systems and/or Council's Software the Council will not exercise this right without giving as much notice as practicable (save in the cases of urgency). Where the separation is to be permanent and the cause of the permanent disconnection is within the control of the Council, the Council will give the organisation nine months written notice of the disconnection taking effect, agreeing an appropriate variation to the Delivery Plan with the Organisation to reflect the cost of an alternative solution acceptable to both parties in accordance with Clause XXX to reflect the cost to the Organisation of providing its own computer systems and software.

24.8 The Organisation shall afford access to any of the computer systems, software, databases and operations used by it pursuant to this Agreement to the Council's Representative and any person (including auditors) nominated by them for all purposes connected with the subject-matter of this Agreement and the Council's own activities.

24.9 The Organisation shall comply with any security policy which may from



time to time be issued by the Council relating to information technology, in whatever form and of whatever nature.

24.10 On termination of this Agreement by expiry of time or otherwise the Organisation shall transfer all data and information in respect of the Services and all matters relating thereto within a reasonable time and with due expedition to the Council or such other person as the Council may direct and until such transfer shall on being so requested by the Council afford access to the same to the Council or such other person as the Council may authorise including but not limited to permitting use thereof and providing all data and/or information requested.

## **25 DATA**

25.1 Subject to the provisions of Clauses XX and XX the Organisation shall be entitled to access such data and information as is stored on the Council's Computer Systems as set out in the Sixth Schedule which the Organisation may require in order to provide the Services.

25.2 In addition to any requirements set out in the Delivery Plan the Organisation will ensure that the Council's data relating to the Services is kept up-to-date.

25.3 Without prejudice to Clauses XX and XX and subject to Clause XX the Organisation shall take all practicable steps to safeguard such data and information as is stored on the Council's Computer Systems and/or Council's Software against unauthorised access, tampering or system failure.

25.4 The Organisation shall at all times ensure that where (following consent under Clause XX) the Organisation is using the Organisation's own computer systems:

25.4.1 comprehensive security copies of any computerised Council Data are updated at the end of each Working Day in relation to that day and at least twice a week are stored in a secure location so as to enable the Organisation (or in the event of the default of the Organisation the Council or such other third party as the Council may appoint) to initiate and operate such

alternative processing arrangements as may be necessary including (but without limitation) in the event of a partial or complete failure of the Organisation's own computer systems;

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

25.5 The Organisation shall comply with any information and data policies and standards which exist, or following consultation may be issued / amended from time to time, by the Council.

## **26 CONFIDENTIALITY**

26.1 Subject to Clause 25.2 the Council and the Organisation shall each keep confidential any Confidential Information communicated to them by the other on the basis that it is confidential.

26.2 Clause 25.1 shall not apply to:

26.2.1 any disclosure of information that is reasonably required to perform the Council's or the Organisation's obligations under this Agreement to persons performing those obligations;

26.2.2 any Confidential Information which is in the public domain other than as a result of a breach of this Clause 25;

26.2.3 any disclosure required by any court order or statutory, legal or Parliamentary obligation of the party making the disclosure or the rules of any government or regulatory authority having the force of law, including the Information Commissioner or the Information Tribunal (as defined in the FOIA) and the requirements of Part 12A of the Local Government Act 1972;

26.2.4 any disclosure of Confidential Information which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party;

26.2.5 any disclosure under the Dispute Resolution Procedure;

26.2.6 any disclosure to any department, office or agency of the Government or their respective advisers;

26.2.7 any disclosure by either party for the purpose of:

- 26.2.8 the examination and certification and/or audit of the Council's or the Organisation's accounts;
- 26.2.9 any examination pursuant under Local Government Act 1999 of the economy, efficiency and effectiveness with which the Council has performed, or is performing its functions; or
- 26.2.10 complying with the FOIA, provided that such disclosure is made in accordance with Clause 26.

26.3 Where a disclosure of Confidential Information is made:-

26.3.1 under Clause 25.2 (other than under Clauses xxxx) the party disclosing the Confidential Information shall use reasonable endeavours to impose a similar duty of confidentiality on the recipient of the information as that contained in this Clause 26;

26.3.2 under Clause 26.2.6 to a person who is a public authority under the FOIA the Council or Organisation making the disclosure shall notify that party that the parties to this Agreement consider that the information may be exempt from disclosure under the FOIA and specify the reasons why.

26.4 The District Auditor and the Audit Commission may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Organisation for the purpose of:

26.4.1 the examination and certification of the Council's or the Organisation's accounts;

26.4.2 the Audit Commission Act 1998 (and any other legislation relating to the inspection, examination and audit of the Council's or the Organisation's accounts); and for

26.4.3 an examination under the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Council has performed, or is performing its functions.

26.5 The Organisation should comply with the Council's document retention policy, or seek agreement from the Council of any broadly comparable policy it wishes to introduce.

## **27 FREEDOM OF INFORMATION**

27.1 Each party shall provide such assistance as the other reasonably

requires to enable the other to comply with the FOIA. Each shall appoint a specific contact officer for FOIA requests. (Changed by SJ)

27.2 Where either party (the “Request Receiving Party”) receives a Request for Information relating to information that the other (the “Information Holding Party”) is holding on behalf of the Request Receiving Party:

27.2.1 the Request Receiving Party shall notify the Information Holding Party as soon as practicable and in any event within 2 (two) Working Days of receiving the Request for Information;

27.2.2 the Information Holding Party shall provide the Request Receiving Party with a copy of all such information in the form that the Request Receiving Party requires within 10 (ten) Working Days of the notification under Clause XXX (or such other period as the Request Receiving Party may reasonably specify having regard to:

.8 the time required to identify, locate and retrieve such information and deliver it to the Request Receiving Party; and

.9 the Request Receiving Party’s obligation to comply with the Request for Information in the timescale given by the FOIA).

27.3 Each party acknowledges that the Request Receiving Party is responsible for determining, in its absolute discretion (but having regard to any guidance or codes of practice issued by the Information Commissioner or the Department of Constitutional Affairs):

27.3.1 whether any information is exempt from disclosure under the FOIA;

27.3.2 in the case of a qualified exemption, whether the public interest in disclosing the information is greater than the public interest in maintaining the exemption; and

27.3.3 whether any information is to be disclosed in response to a Request for Information.

27.4 Where either party receives a Request for Information relating to any Confidential Information, the Request Receiving Party shall (subject to

Clause XX) use all reasonable endeavours to:-

27.4.1 notify the other party of that Request for Information in accordance with Part VII of the Code of Practice issued by the Secretary of State under section 45 of the FOIA; and

27.4.2 consider any representations made by the other party before disclosing that Confidential Information under the FOIA.

27.5 The Request Receiving Party need not notify the other party under Clause XX where it has decided not to disclose that information either because the FOIA does not apply or because it is exempt from disclosure under the FOIA.

27.6 If the Request Receiving Party decides to disclose any Confidential Information under the FOIA, the Request Receiving Party shall use all reasonable endeavours to notify the other party of this decision before making the disclosure.

27.7 Where either party holds information on behalf of the other, the Information Holding Party shall:-

27.7.1 have regard to any code of practice issued under section 46 of the FOIA;

27.7.2 comply with any practice recommendation issued to it under section 48 of the FOIA; and

27.7.3 comply with the Information Holding Party's retention and destruction of information policy.

## **28 DATA PROTECTION**

28.1 The Organisation 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 all data processing to be carried out in connection with the Services; The Organisation and the Council shall each nominate an employee to act as prime contact role in this regard.

28.2 The Organisation shall only undertake processing of Personal Data reasonably required to perform its obligations under this Agreement;

28.3 The Organisation shall not transfer any Personal Data to any country

or territory outside the European Economic Area;

28.4 The Organisation shall not disclose Personal Data to any third parties other than:

28.4.1 to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Organisation to provide the Services;

28.4.2 to the extent required for the making of a claim under this Agreement or under a court order; or

28.4.3 to the extent required under any legal obligation;

28.5 The Organisation shall make any disclosure under Clause XX subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause XX;

28.6 The Organisation shall give notice in writing to the Council of any disclosure of Personal Data supplied by or on behalf of the Council which the Organisation is required to make under Clause 27.4.3 immediately upon becoming aware of such a requirement;

28.7 The Organisation 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 taking reasonable steps to ensure the reliability of staff having access to the Personal Data;

28.8 Within twenty (20) Working Days of a request from the Council, the Organisation shall supply written details of the measures it takes under Clause 27.7 so as to enable the Council to determine whether those procedures comply with the DPA;

28.9 The Organisation shall comply with the Computer Misuse Act 1990 to the extent that the performance of the Services and the other requirements of this Contract give rise to obligations under that Act;

28.9.1 provide the Council with such information as the Council may

require to satisfy itself that the Organisation is complying with the obligations referred to in Clause 27

28.10 make such application for a change in its registration and take such other steps as may be necessary to affect the Council access to information which is required by the Council in connection with any of its statutory duties and responsibilities and for any purpose connected with this Agreement

## **29 INTELLECTUAL PROPERTY RIGHTS**

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

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

## **30 RIGHT TO USE DOCUMENTS**

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

30.2 The organisation shall not, and shall ensure that its Board Members employees, agents and subcontractors shall not, divulge or dispose of or part with possession, custody or control of any materials or

information provided to the Organisation by the Council pursuant to the Agreement or prepared or obtained by the Organisation pursuant to the Agreement other than in accordance with the express written instructions of the Council's Representative.

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

### **30 HEALTH AND SAFETY**

30.1 The Organisation shall at all times comply with the requirements of the Health and Safety at Work, etc. Act 1974, the Management of Health and Safety at Work Regulations 1992 (including the provision by the Organisation of a copy of its risk assessment under such regulations) and of all other Acts, Regulations, Orders or rules of law pertaining to health and safety.

30.2 The Organisation shall, at its quarterly meetings with the Council, notify the Council of any material risks it identifies (as defined in the Organisation's risk management policies)

### **31 INSURANCES**

31.1 Save as otherwise provided in the Leases/Licences the Council shall during the currency of this Agreement be responsible for insuring its premises (excluding domestic dwellings) against fire, explosion, storm and damage on such terms and against such other risks as the Council shall from time to time determine.

31.2 The Organisation shall at all times maintain in force such policies of insurance with reputable insurers or underwriters approved by the Council as shall fully insure and indemnify the Organisation against its liability:

31.2.1 to the Council and any employee of the Council;

31.2.2 to the employees of the Organisation;

31.2.3 to any other person



in the sum of at least £50,000,000 in respect of any one occurrence or series of occurrences arising out of one event.

- 31.3 The Organisation shall insure against any expense, liability, loss, claim or proceedings in respect of any damage whatever to private property (real or personal) insofar as such damage is due to the negligence, omission or default of the Organisation, its employees or agents or any sub-contractor or person for whom the sub-contractor is responsible.
- 31.4 Without prejudice to the generality of this Clause 31, it is hereby agreed and declared that the Organisation shall be liable for any loss or damage whatsoever and howsoever caused to the contents of the Premises and to the full value of such contents in the event of fire.
- 31.5 The Organisation shall maintain insurance to a sum of at least £50,000,000 in respect of personal injury to or the death of any person under a contract of service with the Organisation and arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1988 and any statutory orders made thereunder.
- 31.6 The Organisation shall maintain all other insurances as may be necessary or prudent for the performance of the Agreement. In particular, without limiting the generality of the foregoing, Board Members-officer's insurance for the protection of Board Members of the Organisation and contract works insurance.
- 31.7 The Organisation shall ensure that all relevant insurance policies shall have the interest of the Council endorsed upon them or shall otherwise expressly by their terms confer their benefits upon the Council.
- 31.8 The Organisation shall at the Commencement Date and thereafter on the anniversary thereof and at such other times as the Council may reasonably require supply the Council with certified copies of all insurance policies required by any of the provisions of this Clause and with any cover notes, premium receipts or other documents necessary to show that such policies are fully maintained and otherwise comply

with the Agreement.

31.9 If and to the extent that the Council is dissatisfied as to the adequacy of any policy of insurance effected by the Organisation pursuant to this Clause it shall give notice in writing to the Organisation to that effect and upon receipt of such notice the Organisation shall forthwith procure and effect such additional, enhanced or other insurance as the Council may require.

31.10 In the event that the Organisation fails to comply with a requirement of the Council in accordance with Clause 31.9 the Council shall be entitled to take either or both of the following steps:

31.10.1 effect such insurances itself and reflect the costs of so doing in the then current Delivery Plan;

31.10.2 commence termination of the Agreement or other action in accordance with Clause XX

31.11 The Council acknowledges that the Organisation may (if the Council so agrees) discharge its obligations under this Clause by procuring some or all the above insurances through or by the Council or its agents.

## **32 HOUSING REGULATION**

Without prejudice to the other applicable provisions of this Agreement the Organisation shall co-operate fully with all aspects pertaining to housing regulation and inspection in respect of the inspection of (a) the operation of this Agreement and the work of the Organisation and (b) the Council's own housing service and housing related issues whether in relation to the Organisation's work on behalf of the Council or the Council's own retained functions and activities.

## **33 PROVISION OF INFORMATION**

33.1 Without prejudice to the other provisions of this Agreement the Organisation shall provide all relevant information which may be required by the Council in order that the Council can act fairly, properly and in accordance with its statutory obligations in connection with the provision of the Services or the future provision of the same or any

similar services and also to deal with investigations or inquiries by the District Auditor, Ombudsman and similar persons or bodies. The Council may make a request for any such information at any reasonable time and the Organisation shall comply in the time limits set by the Council

33.2 Subject to Clause 33.1 the Organisation shall consult as often as may be necessary with the Council's Representative or with such other member of the Council's retained housing staff as the Council's Representative may specify from time to time to ensure that the Services are provided and continue to be provided in a continuous and efficient manner and in accordance with the provisions of this Agreement.

33.3 The Organisation's Representative and the Council's Representative shall at a mutually convenient time and location attend the following meeting(s) to be arranged from the Commencement Date:

33.3.1 at least once a month to discuss operational issues;

33.3.2 at least once a month to discuss:

1. the manner and extent of the Organisation's provision of the Services pursuant to this Agreement and the Delivery Plan;
2. financial and budgetary issues;
3. any other relevant issues which may arise from time to time; and
4. quarterly performance;

subject to the Council's right reasonably to vary the number of such meetings by providing the Organisation with reasonable prior notice thereof.

33.4 The Organisation's Representative shall meet with the Council's area boards at mutually agreed intervals and comply with requests from the Council's Representative with regard to attendance at Scrutiny Meetings of the Council (changed by SJ)

33.5 The Organisation shall observe and comply with any reasonable and appropriate instructions or directions given or made by the Council's

Representative so as to help ensure the proper performance of the Services in accordance with the Delivery Plan and all such instructions or directions shall be confirmed in writing by the Council's Representative before the end of the Working Day which follows the issue of such instructions or directions.

33.6 The Organisation shall inform the Council's Representative immediately by telephone or email (and shall confirm in writing as soon as practicable following such call or email) of any or all of the following matters:

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

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

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

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

33.8 The Organisation and the Council shall establish such mutual arrangements as may be necessary (whether by pager, mobile telephones, email or otherwise) to ensure that the liaison arrangements stipulated in this Agreement can be achieved.

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

## **34 AUDITS**

34.1 The Organisation shall at all times (including following the termination of this Agreement) allow or procure for any auditor (including any Audit Commission employee) or for the Council's Representative (or his nominee) for the purposes of an internal or external audit or inspection:

34.1.1 immediate access to;

34.1.2 permission to copy and remove any copies of; and

34.1.3 permission to remove the originals of any assets, cash, books, records and information in the possession or control of the Organisation which in any way relate to or are or were used in connection with the provision of the Services including (but without limitation) any of the Council's or organisation's Data and any such information stored on a computer system operated by the Organisation.

34.2 The Organisation will provide all co-operation and afford all access to personnel and records in order to assist the Council in carrying out any investigations which are already under way at the Commencement Date and any investigations which are carried out during this Agreement and any which are carried out after the termination or expiry of this Agreement.

34.3 The Organisation shall provide each year to the Council's Representative a copy of its audited accounts within six months of the relevant accounting reference date. In the event that the Organisation fails to provide accounts in accordance with this Clause then, without prejudice to any other rights or remedies available to the Council, the Council's Representative or such persons as may from time to time be nominated by the Council's Representative shall be given access to all and any financial documents, assets, cash, accounting documents and information in the possession, custody or control of the Organisation.

## **35 FRAUD**

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

the Council's Representative. The Council Representative upon receipt of notice of the fraud suspected, can elect the Organisation to assume responsibility for investigating such suspected fraudulent action, notifying the Council's Representative of the outcome of the said investigation.

35.2 On receiving notification under Clause 35.1 and without prejudice to the Organisation's legal liability and financial responsibility the Council's Representative shall unless he / she otherwise with the Organisation's Representative assume and be given sole responsibility for investigating or arranging for the investigation of such fraudulent action or malpractice.

35.3 The Organisation shall afford all possible access and facilities to the Council's Representative and his nominees and agents when the Council's Representative carries out an investigation into any such fraudulent action or malpractice, whether the investigation arises following a notification under Clause 35.1 or as a result of the Council's Representative's own information.

35.4 The Council's Representative shall have the right (without prejudice to Clause 35.3) to require that the Organisation suspend from any further work on this Agreement any person suspected of fraudulent action or malpractice.

35.5 Without prejudice to any other rights the Council may have (including but not limited to termination under Clause XX) the Council's Representative shall be entitled to require that the Organisation suspend all or any stipulated further work under this Agreement if the Council's Representative has reasonable grounds for believing that fraudulent activity or malpractice has taken place.

## **36 COMPLAINTS**

36.1 The Organisation shall arrange for notices to be permanently displayed giving information as to how complaints about the provision of the Services may be made. The Organisation shall deal with any complaints received from whatever source in a prompt, courteous and

efficient manner.

36.2 The Organisation shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Council's Representative. The Organisation shall through an annual Complaints Report provide to the Council the summary details of the number, nature and type of complaint and any policy / budgetary recommendations arising. The organisation shall notify the Council's Representative in writing as soon as practicable of any formal complaints which if proven could have a significant impact on the liability of the Council or the wellbeing of the wider community in Barnsley.

36.3 The Organisation shall comply with and adopt a complaints policy equivalent or broadly similar to that of the Council but shall be entitled to implement such variances to the complaints policy as it deems appropriate. The Organisation shall amend the complaints policy if the Council so directs pursuant to any recommendations from the Local Government Ombudsman. Further, the Organisation shall comply with any direction from the Council arising from a direction or a recommendation from the Local Government Ombudsman in respect of a complaint regarding the Organisation's performance of the Services.

36.4 Any costs incurred by the Council in responding to and dealing with any justified complaints about the Organisation's performance of the Services (including any matters raised with the Ombudsman) shall be reflected in a variation to the current Delivery Plan.

36.5 The Organisation acknowledges that for the purposes of this Clause 36 the term "complaints" has the meaning given in the Organisation's complaints policy from time to time as agreed and as approved by the Council (Changed by SJ).

## **37 STATUTORY INVESTIGATIONS**

37.1. The Organisation immediately upon becoming aware of the same shall notify the Council's Representative of any accident, damage or breach of any statutory provision which affects or might reasonably be

expected to affect the Organisation's ability to comply with the Delivery Plan or deliver the Services in accordance with this Agreement.

37.2 The Organisation agrees to notify the Council immediately in writing of any legal proceedings which may be commenced alleging that any Dwelling is a statutory nuisance or seeking damages for failure to repair. The Organisation shall immediately pass on to the Council any documents it receives in connection with such legal proceedings.

37.3 If requested to do so by the Council's Representative, the Organisation shall:

37.3.1 provide the Council's Representative with any relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved

37.3.2 attend any relevant disciplinary hearing internal to the Council and through the appropriate directors or employees or agents give evidence in such inquiries or proceedings or hearings.

37.4 Should any part of the Services involve the Organisation in performing duties or exercising powers under some other contract it shall upon becoming aware of anything which is likely to give rise to arbitration or litigation forthwith notify the Council's Representative of the existence of any such matter together with such particulars as are available.

37.5 The Organisation agrees to provide all necessary support and assistance to the Council in bringing any legal proceedings in relation to rent recovery or in defending and/or settling any legal proceedings issued in respect of statutory nuisance or failure to repair, including the provision of relevant information, documents or other data, assisting the Council in the preparation of any witness statements or other evidence required, and attending at any meetings or hearings as the Council may require.

37.6 The Council agrees that it shall deal with all legal proceedings promptly and in accordance with any applicable Key Performance Indicators. The Organisation shall indemnify the Council for and against any costs, damages and expenses (including legal costs and expenses) which



may be incurred by the Council as a direct consequence of the Organisation's negligence or breach of its obligations under this Agreement and which are paid or payable by the Council pursuant to such legal proceedings.

### **38 AGENCY**

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

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

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

### **39 SECURITY**

39.1 The Organisation shall maintain and shall ensure that its personnel, partners and all its visitors maintain the security of such of the Council's Premises which it is licensed or permitted to use under Clause XX both when in use and when not in use.

39.2 The Organisation shall ensure that access to the Council's Premises which it is permitted to use under Clause XX is restricted to its personnel, partners and visitors engaged upon or in connection with the provision of the Services.

39.3 The Organisation shall comply with the Council's security regulations including any made for the purpose of the DPA.

39.4 The Organisation shall provide to all of its personnel- security passes.

39.5 The Organisation shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Organisation by the Council.

## **PART G – RESPONSIBILITIES AND RIGHTS OF THE COUNCIL**

### **40 FAILURE TO PERFORM**

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

### **41 PROVISION OF INFORMATION**

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

### **42 ASSIGNMENT**

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

### **43 USE OF PREMISES**

The Council shall make available to the Organisation the Premises detailed in Part I of the First Schedule on the terms and conditions set out in the form of Lease/Licences in the Fifth Schedule.

### **44 HOUSING REGULATION**

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

### **45 RIGHT TO USE PREMISES**

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

use.

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

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

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

45.2.3 to co-ordinate and supervise the operation of the provision of temporary accommodation described in Clause XX

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

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

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

45.2.7 to produce monthly accounts to the Council itemising its reasonable costs incurred in the provision of the services detailed in Clauses XX such costs to be agreed between the parties (and thereupon treated as a variation of the Delivery Plan) and in default of such agreement the matter shall be referred to the Dispute Resolution Procedure.

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

#### **46 EXCLUSION OF LIABILITY**

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

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

#### **47 RIGHTS AND DUTIES RESERVED**

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

#### **48 WAIVER**

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

### **PART H – FINANCIAL ARRANGEMENTS AND OTHER MATTERS**

#### **49 FINANCIAL ARRANGEMENTS**

49.1 The Organisation shall comply with all the financial arrangements described in the Fourth Schedule. If for any reason these financial arrangements are deemed to be unacceptable or unsatisfactory by an appropriate regulatory body, including, but not limited to, HM Revenue and Customs, then the parties shall amend and/or modify such financial arrangements as may be necessary in order to comply with the requirements of such regulatory body.

49.2 The Organisation shall, as often as reasonably necessary but at least every quarter, undertake regular financial reviews in order to consider the Organisation's expenditure and income against its budget and its future expenditure and income and to consider any capital finance implications of entering into any proposed transaction which may fall within those categories of receipts, contracts and liabilities as set out in sections 13 (1) (a) to (g) inclusive of the Local Authorities (Companies) Order 1995 (no. 849). The Organisation shall not proceed with any such proposed transaction, unless and until it has sought and obtained the written consent of the Council, which consent shall be at the Council's absolute discretion.

49.3 The Organisation shall as soon as reasonably practicable after forming any intention to borrow any sum of money or enter into any credit arrangement (as defined by the Local Government Act 2003):

49.3.1 serve written notice on the Council of such intention;

49.3.2 provide the Council with any information concerning the proposed borrowing or credit arrangement that the Council

may request; and

49.3.3 not enter into any agreement to borrow money or credit arrangement without the Council's express written consent to do so at the Council's absolute discretion.

49.4 The Organisation shall not, without prior written consent of the Council, at the Council's absolute discretion enter into any transaction which may affect:

49.4.1 the Council's affordable borrowing limits as determined from time to time under section 3 of the Local Government Act 2003;

49.4.2 any borrowing limits set by the Secretary of State under section 4 of the Local Government Act 2003 either specifically for the Council or for local authorities generally; or

49.4.3 the Council's compliance with the Prudential Code for Capital Finance in Local Authorities published by CIPFA as amended or reissued from time to time.

## **50 RECOVERY OF RENT**

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

## **51 RIGHT TO USE SURPLUSES**

If the Organisation out-performs the Delivery Plan or generates surpluses through its wider trading activities and if as a consequence the Council

would benefit from sums for which it had not budgeted and the Council does not require the same to meet any housing and/or housing related obligations or commitments then to the extent permitted by and subject to any conditions set out in the Delivery Plan the Organisation shall be entitled to use such sums in accordance with any decision of its board on re-investment as may be approved by the Council at its absolute discretion.

**52 VALUE ADDED TAX**

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

**53 INTEREST ON OVERDUE PAYMENTS**

Save where payment is reasonably disputed by the Council and the Organisation has been notified of such dispute, if and whenever any payment due by either party in accordance with this Agreement shall at any time remain unpaid for a space of twenty (20) Working Days next after becoming payable a further and additional sum by way of interest on the same calculated on a day-to-day basis at an annual rate higher by one (1) per cent than the Co-operative Bank plc Base Rate in force from time to time from the date upon which sum first became payable shall (if demanded) be accounted for (as if paid by) the defaulting party to the other party.

**PART I – EMPLOYMENT AND STAFFING**

**54 EMPLOYEES**

54.1 Details relating to existing Transferring Employees are set out in the Second Schedule. These details are warranted to be correct on 28<sup>th</sup> November 2002

54.2 The Organisation shall employ all the Transferring Employees on broadly comparable terms and conditions as to pension and death-in-service benefits and it is acknowledged by the Organisation that some of the Transferring Employees are members of the local government statutory superannuation scheme to which the Council belongs.

54.3 The Council shall indemnify and hold harmless the Organisation against each and every cost, claim, liability, expense or demand arising out of:

54.3.1 anything done or omitted to be done prior to the Commencement Date by or on behalf of the Council in respect of any contract of employment or any collective agreement or any persons employed in the Undertaking which notwithstanding that it relates to employment prior to the Commencement Date is deemed by reason of transfer of the Undertaking pursuant to this Agreement to have been done or omitted to be done by or in relation to the Organisation in accordance with the Regulations;

54.3.2 the Council's failure to pay any of the Transferring Employees any sums properly due in respect of the period prior to the Commencement Date; and

54.3.3 any claim by any trade union, staff association or staff body recognised by the Council in respect of all or any of the Transferring Employees arising out of the Council's failure prior to Commencement Date to comply with its legal obligation in relation to information and consultation to or with such trade unions or staff associations or bodies save insofar as any such failure results from a failure by the Organisation to provide information pursuant to Regulation 10(3) of the Regulations.

54.4 The Organisation shall indemnify and hold harmless the Council against each and every cost, claim, liability, expense or demand arising out of:

54.4.1 any claim or allegation by a Transferring Employee that in consequence of the transfer of the Undertaking to the



Organisation there has been or will be a substantial change in such Transferring Employee's working conditions to his detriment;

54.4.2 any act or omission of the Organisation in relation to any Transferring Employee occurring on or after the Commencement Date and any claim for redundancy payments or protective awards and any liability for wrongful dismissal or unfair dismissal or otherwise in connection with the transfer of the employment of the Transferring Employees to the Organisation;

54.4.3 any claim made against the Council under Regulation 10 of the Regulations which results from a failure by the Organisation to supply information to the Council pursuant to the said Regulation;

54.4.4 any failure by the Organisation to provide broadly comparable retirement or death-in-service benefits for or in respect of any Transferring Employees to which such persons would have been entitled immediately before the Commencement Date.

54.5 The Organisation shall:

54.5.1 establish such staffing arrangements as may be appropriate to ensure the due and proper performance of the Services;

54.5.2 provide details of the said staffing arrangements to the Council's Representative.

54.6 The Organisation may not make significant amendments to the said staffing structure during the Term without the prior written approval of the Council's Representative (which shall not be unreasonably withheld if the Council's Representative is satisfied that such amendments will assist in the due and proper performance of the Services). A significant change is:

54.6.1 One which will result in an increase or decrease of 10% or more of the organisation's total number of employees compared to the number before the amended agreement takes effect;

54.6.2 a redundancy of one of the Executive Team; or

- 54.6.3 the creation of a new post in the Executive Team, or
- 54.6.4 a change that fundamentally amends the way services are undertaken.

54.7 The Organisation acknowledges that the Council has implemented Redeployment Procedures and the Protection of Earnings Policy. The Organisation and the Council agree to a reciprocal arrangement pursuant to which the Organisation shall adopt and implement the Council's Redeployment Procedures and the Protection of Earnings Policy thereby facilitating priority access to job vacancies within each respective body to employees of each respective body. The Council and the Organisation agree that any redeployment of employees as between the Council and the Organisation which takes place outside of a transfer of contracts of employment pursuant to the Regulations shall be recognised as continuous service for the purposes of calculating employees' entitlement to redundancy payments, sickness allowances, annual leave and occupational maternity provision.

54.8 The Organisation agrees that it shall adopt equivalent or broadly comparable personnel policies including but not limited to those policies listed in the XX Schedule. The Council acknowledges that the Organisation is committed to the implementation of equivalent or broadly comparable policies which shall be applicable to Transferring Employees and agrees that prior to the introduction of any new policies, procedures or protocols which may affect the conditions under which Council employees are employed, it shall consult with the Organisation.

54.9 The Council acknowledges that the Organisation may enter into contracts with third parties on terms which inter alia may provide for the transfer of any of the employees employed by the Organisation ("Organisation Transferring Employees") in connection with the provision of the Services to such third party or parties ("the Subsequent Employer"). Any such transfer of a contract of employment by the Organisation to a Subsequent Employer shall be by virtue of the Regulations. The Organisation shall ensure that any such third party contract pursuant to which such a transfer of

employment is to take place, contains terms to the following effect:

- 54.9.1 that the Subsequent Employer be required to employ the Organisation Transferring Employee(s) on broadly comparable terms and conditions in relation to pension provision as under the Organisation Transferring Employee'(s)' existing contract(s) of employment;
- 54.9.2 that the Organisation shall provide and warrant to the Subsequent Employer details relating to Organisation Transferring Employees including details of any material changes which may occur to the information prior to the commencement date of such third party contract and shall provide to the Subsequent Employer upon written request such further factual (but not personal) information relating to the Organisation Transferring Employees reasonably required by the Subsequent Employee;
- 54.9.3 that the Organisation shall indemnify and hold harmless the Subsequent Employer against each and every cost, claim, liability, expense or demand arising out of:
  - 1. anything done or omitted to be done prior to the commencement date of such third party contract by or on behalf of the Organisation in respect of any contract of employment or any collective agreement or any persons employed in the undertaking which notwithstanding that it relates to employment prior to the commencement date is deemed by reason of transfer of the undertaking in connection with such third party contract to have been done or omitted to be done by or in relation to the Subsequent Employer in accordance with the Regulations;
  - 2. the Organisation's failure to pay any of the Organisation Transferring Employees any sums properly due in respect of the period prior to the commencement date of such third party contract; and
  - 3. any claim by any trade union, staff association or staff body recognised by the Organisation in respect of all or any of the Organisation Transferring Employees arising out of the Organisation's failure prior to the

commencement date of such third party contract to comply with its legal obligation in relation to information and consultation to or with such trade unions or staff associations or bodies save insofar as any such failure results from a failure by the Subsequent Employer to provide information pursuant to Regulation 10(3) of the Regulations.

**55 INFORMATION ABOUT EMPLOYEES**

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

**56 RIGHT TO REPRESENTATION**

Without prejudice to its obligations under the Regulations, the Organisation shall take all appropriate steps consistent with good employer practice to ensure that its employees have appropriate representation (whether through trade unions or otherwise). The Organisation acknowledges that the Council has well established procedures and policies in relation to the recognition of trade unions and consultation and negotiation arrangements consistent with the principle of collective bargaining and is committed to the implementation of broadly comparable procedures. The Organisation agrees to recognise those trade unions who are signatories to the relevant agreements of the National Joint Council for local government services and the joint negotiating committee for Chief Officers of local authorities for consultation and negotiation purposes. The Organisation agrees that it shall establish, maintain and comply with, a broadly comparable process for formal consultation with its employees.

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

### **57 MEETINGS BETWEEN COUNCIL AND ORGANISATION**

Without prejudice to the specific provisions of this Agreement, the Council and the Organisation shall meet at such level and with such frequency as may be reasonably necessary to ensure that this Agreement is honoured and the Delivery Plan performed.

### **58 COUNCIL'S REPRESENTATIVE**

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

58.2 The Council's Representative shall have power to issue instructions to the Organisation on any matter relating to the provision of the Services and the Organisation shall comply therewith. If any such instruction is a variation within Clause 61 it shall be subject to the terms thereof. The Organisation shall be entitled to object to any such instructions which would require the Services to be delivered in any way which is not consistent with this Agreement or the Delivery Plan or would have the effect of significantly varying the fundamental nature of the Services and the delivery thereof and such objection shall be referred to the Dispute \Resolution Procedure. Provided that whilst the matter is being dealt with under the Dispute Resolution Procedure the Organisation shall continue to provide the services and will comply with any such instruction which it is necessary for the Organisation to comply with in order that the Council continue to discharge its statutory duties

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

## **PART K – TMOs**

### **59 TENANT MANAGEMENT ORGANISATIONS**

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

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

59.2.1 provision of information and records about the Services;

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

59.2.3 attendance at meetings of such tenants

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

59.3 At such time as a decision is made that a transfer of management responsibility for all or part of the Services is to take place in accordance with the provisions set out in Clause XX the Council may issue further instructions to the Organisation requiring the Organisation to make arrangements to transfer responsibility for the Services and the Dwellings so affected to the Tenant Management Organisation in such manner and within such timescale as the Council may prescribe and the Organisation shall comply with such instructions which may include (but not be limited to):

59.3.1 transferring data, records, statistics, files and other information in a format and manner prescribed by the Council;

59.3.2 transferring to the Tenant Management Organisation in accordance with the Regulations any staff transfer wholly or mainly engaged in the provision of the services which are

- transferred to the Tenant Management Organisation;
- 59.3.3 transferring necessary equipment and materials as may reasonably be stipulated by the Council's Representative;
- 59.3.4 establishing working arrangements with the Tenant Management Organisation; and/or
- 59.3.5 providing any other assistance reasonably needed to enable such transfer to take place.
- 59.4 At such time as a transfer of management responsibility to a Tenant Management Organisation takes place the Council shall be entitled to vary this Agreement in accordance with Clause XX (giving three (3) months notice to the Organisation) and where such a Variation is made the amendment to the Delivery Plan in accordance with Clause 63.3 shall reflect the cost of providing such Services as remain to be carried out under this Agreement and if no such Services remain this Agreement shall terminate (and Clause XX shall apply).
- 59.5 The Organisation will assume such of those responsibilities of the Council which the Council and the Organisation shall agree which are set out in any management agreement made between the Council and any Tenant Management Organisation whether such agreement exists at the date of this Agreement or arises during the currency of it and the Council shall be entitled to vary this Agreement to reflect such agreement in accordance with Clause XX
- 59.6 In the event that a Tenant Management Organisation to which responsibility for managing the Services has been transferred in accordance with this Clause XX ceases to provide all or any part of those Services for all or any of the Dwellings the Council shall be entitled to vary further this Agreement in accordance with Clause XX so as to require the Organisation to provide such ceased Services and where such a variation is effected a variation may also be made in relation to the current Delivery Plan in accordance with Clause XX
- 59.7 The provisions of this Clause shall apply, mutatis mutandis, to the transfer of additional management responsibilities to an existing Tenant Management Organisation as well as any other Tenant

Management Organisations.

59.8 The Organisation shall in complying with its obligations under this Clause XX ensure that to the extent permitted by any existing agreement(s) with any Tenant Management Organisation the obligations to provide the Services at the level and standards required by the Agreement or otherwise prescribed by the Council are unaffected.

## **PART L – TERM**

### **60 DURATION AND RENEWAL**

60.1 This Agreement shall expire on 31st November-2012 unless extended by the Council pursuant to the following provisions of this Clause and subject to earlier termination as provided herein.

60.2 The Council shall be entitled (but without any obligation whatsoever) to extend the Term for one or more further periods of up to five years by giving notice to this effect to the Organisation no later than six calendar months before the date on which the Agreement would otherwise expire pursuant to Clause 60.1.

## **PART M – VARIATIONS ETC**

### **61 VARIATIONS**

61.1 The Council may from time to time either unilaterally or in response to representations from the Organisation require changes (hereinafter referred to as “Variations” and each a “Variation”) to be made to the Services and accordingly may upon giving reasonable written notice thereof to the Organisation add to delete from or otherwise amend in any way the provisions of this Agreement and the Organisation shall be bound by any such Variations PROVIDED THAT any delay resulting does not affect the provisions of the Services or the discharge of the Council’s statutory duties the Organisation shall be entitled to object to any such instructions which would have the effect of significantly varying the fundamental nature of the Services and the delivery thereof and such objection shall be referred to the Dispute Resolution Procedure.



61.2 Reasonable notice for the purpose of Clause 63.1 shall be deemed to be either:

61.2.1 six months' notice for changes which the Council has determined will require consultation under Section 105 of the Housing Act 1985 or which it reasonably considers will result in more or fewer staff being required by the Organisation or significantly more cost being incurred by the Organisation; or

61.2.2 one month's notice in any other case.

61.3 Where a Variation is effected a variation shall be made in relation to the current Delivery Plan as soon as practicable by the Council and the Organisation (both acting reasonably) by reference to any increase or reduction in the Organisation's responsibilities and any likely increase or reduction in cost to the Organisation occasioned by such variation.

61.4 In the event that a Variation is effected by the Council which is not made in response to representations from the Organisation and which is likely to result in the redundancy of one or more of the Organisation's employees (including a Transferring Employee) engaged in the provision of the Services the Organisation shall as soon as practicable:

61.4.1 identify the relevant employee or employees;

61.4.2 quantify and substantiate the costs which the Organisation is likely to incur by reason of the said redundancy or redundancies; and

61.4.3 notify the Council of the same and on receipt of such notification the Council shall, having consulted (where necessary) with the Organisation, either:

1. take account of the potential redundancy costs to be incurred by the Organisation as a result of the Variation in determining the variation to the Delivery Plan in accordance with Clause 61.3 or (if the Council so determines); or

2. meet the amount of the statutory redundancy entitlement of the relevant employee or employees.

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

61.5 The Organisation shall provide to the Council such information as the Council may require to enable it to reach a determination in accordance with Clause 61.3

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

61.7 In the event of a dispute as to how any Variation affects the Delivery Plan pursuant to this Clause 61 the matter shall be resolved through the Dispute Resolution Procedure.

## **62 ALTERATIONS TO THE NUMBER OF DWELLINGS**

62.1 Where and whenever the number of Dwellings undergoes a substantial change (hereinafter referred to as an "Alteration") during the Term for any reason (save pursuant to Clause xx) a variation shall be made to the Delivery Plan pursuant to Clause XX and such variation shall take account of any increase or reduction in the Organisation's responsibilities and any likely increase or reduction in cost to the Organisation resulting from such Alteration. Notwithstanding this provision, changes in the number of Dwellings may be taken into consideration as part of the calculation of the Organisation's Management Fee whether or not they warrant an Alteration to the Delivery Plan.

- 62.2 A “substantial change” for the purposes of Clause XX shall mean any increase or decrease of 5% or more in the number of Dwellings either:
- 62.2.1 being managed by the Organisation immediately after the Commencement Date; or
  - 62.2.2 remaining to be managed by the Organisation following any one or more such substantial changes

and for the avoidance of doubt a substantial change shall be deemed to have arisen as soon as the said increase or decrease occurs whether as a consequence of one event or a series of events.

- 62.3 The Organisation shall provide to the Council such information as the Council may require for the purposes of Clause 62.1
- 62.4 It is hereby agreed that no Variation shall be made pursuant to Clause 62.3 as a result of an Alteration if there is a compensating reduction or reorganisation of any part of the Services.
- 62.5 If the Organisation disputes a Variation pursuant to Clause 61.3 arising from an Alteration it shall be entitled to refer the matter to the Dispute Resolution Procedure.

## **63 TERMINATIONS ETC**

- 63.1 If the Organisation or where applicable any director or any senior manager thereof:
- 63.1.1 commits a material breach of any of the Organisation’s obligations under the Agreement;
  - 63.1.2 changes the Organisation’s structure or staffing in a way which in the opinion of the Council adversely affects the ability of the Organisation to discharge its obligations under the Agreement to the Contract Standard;
  - 63.1.3 has any director or senior manager of it convicted of dishonesty;
  - 63.1.4 becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal for voluntary arrangements for a composition of debts, or any scheme or arrangement

approved in accordance with the Insolvency Act 1986;

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

63.1.6 has a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

63.1.7 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;

63.1.8 has an administrator or an administrative receiver (as defined in the Insolvency Act 1986) appointed;

63.1.9 has possession taken by or on behalf of the holders of any debenture secured by a floating charge, or any property comprised in, or subject to, the floating charge;

63.1.10 is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator or an administrative receiver, or which entitle the court to make a winding-up order

then in any such circumstances the Council may (if it so decides) exercise the rights described in Clause XX

63.2 If there is or has been any act, omission or failure by the Organisation, its employees, sub-contractors or agents in the performance of the Organisation's obligations under this Agreement which in the opinion of the Council delays, interrupts or prevents the performance of the Services required under this Agreement in accordance with the terms of the Agreement and any standard specified herein the Council shall be entitled (if it so wishes) to exercise the rights described in Clause XX

63.3 At any the Council may take any or all of the following actions:

63.3.1 either provide itself or procure the provision of the whole or the relevant part of the Services until such time as (if at all) the Organisation shall demonstrate to the satisfaction of the Council that the whole or such part of the Services will be once more provided by the Organisation in accordance with the provisions hereof;

63.3.2 without determining the whole of this Agreement terminate

forthwith the relevant part of the Services only and thereafter itself provide or procure a third party to provide such part of the Services;

63.3.3 subject at all times to complying with its obligations under Section 105 of the Housing Act 1985 and any guidance issued by the Department for Communities and Local Government (or any successor body) from time to time determine the whole of this Agreement

and in the event of action pursuant to Clauses XX and XX a corresponding variation to the Delivery Plan shall be made in accordance with Clause XX

63.4 If the Agreement is terminated in whole or in part as provided in Clauses XX the Council shall:

63.4.1 be entitled to reoccupy any premises and repossess any other physical resources or assets licensed, loaned, or hired to the Organisation and to exercise a lien over any of the physical resources or any other thing belonging to the Organisation and shall have full and unfettered licence over all documents for use in connection with the Services;

63.4.2 be entitled to employ and pay other persons to provide and complete the provision of the Services or any part thereof and to use all such Organisation's physical resources or other things, and all such documents for the purpose thereof.

63.5 If at any time during the Term the Council shall determine that the Services or any substantial and / or material part of them have either not been undertaken with due skill and care or have been carried out inadequately or otherwise not in accordance with the provisions of this Agreement the Council shall be entitled (without prejudice to the foregoing provisions of this Clause XX and any other right or remedy available to it) to take (if it so wishes) any or all of the following actions:

63.5.1 serve notice on the Organisation to rectify the defect (where or when it is capable of rectification) within such reasonable time as the Council may direct;

63.5.2 if the defect persists carry out the relevant Services itself or by

a third party and vary the Delivery Plan in accordance with Clause XX to reflect the Council's loss, cost and expense in so doing.

63.6 If the Council exercises its rights under this Clause XX to terminate the whole or any part of the Agreement then in relation to the whole or any such part the Organisation shall:

63.6.1 unless the Council requests otherwise, forthwith cease to perform any of the Services;

63.6.2 immediately hold all rent and other sums collected or obtained under this Agreement on trust for the Council notwithstanding any right of retention under Clause XX;

63.6.3 hand over this Agreement to the Council without detriment to the interest of the Council's tenants or other customers of the Council.

63.7 The Council undertakes to exercise its power to appoint and remove Board Members pursuant to Article 14(3) of the Articles of Association of the Organisation only when any of the circumstances described in Clauses XX and XX occur and then only for so long as (in the Council's reasonable opinion) the relevant circumstances subsist.

## **64 VARIATION OF CONTRACT**

Subject to Clauses 61 and 62, no other deletion from, addition to, or variation of this Agreement shall be valid or of any effect unless agreed in writing and signed by the parties.

## **65 DISPUTE RESOLUTION**

65.1 Without prejudice to the Council's rights under Clause 63, if a dispute, difference or issue between the parties (a "**Dispute**") arises or is referred to the Dispute Resolution Procedure or either party considers that the other is in breach of the Agreement, the parties shall use all reasonable endeavours to negotiate in good faith a resolution of such breach or settlement of such Dispute in accordance with this Clause 65

65.2 If either the Council or the Organisation consider that the other has

committed a breach of this Agreement or that a Dispute has arisen it may write a letter to that party specifying:

65.2.1 what the breach or Dispute is alleged to be;

65.2.2 what steps that party should take to remedy the breach or resolve the Dispute; and

65.2.3 within what reasonable period such steps should be taken.

65.3 If the breach is not remedied or the Dispute is not resolved within the period specified under Clause 65.2.3 to the satisfaction of the party sending the letter under Clause 65.2, the following stages shall apply to secure the remedy of the breach or resolve the Dispute:

**65.3.1 Stage 1:** the Council's Representative and the Organisation's Representative shall meet with each other within 15 (fifteen) Working Days of a request to do so by the party who sent the letter under Clause 65.2 to attempt in good faith to resolve the Dispute or agree the steps necessary to rectify the breach;

**65.3.2 Stage 2:** if the Dispute is not resolved under Clause 65.3.1 or, in the case of a breach, the steps necessary to rectify the breach are not agreed, in each case within 15 (fifteen) Working Days of the date of the meeting held under Clause 65.3.1, or the proposals agreed are not implemented within the period agreed for their implementation, it shall be referred to:

1 the Council's Representative and the [Cabinet Member] responsible for monitoring the Organisation; and

2 the Chief Executive of the Organisation and two Board Members of the Organisation,

who shall all meet within 10 (ten) Working Days of such referral to consult with each other in good faith in an attempt to resolve the Dispute;

**65.3.3 Stage 3:** if a Dispute is not resolved under Clause 65.3.2, or, in the case of a breach, either proposals to remedy the breach are not agreed within 5 (five) Working Days of the meeting held under Clause xx or are not implemented within the period agreed for their implementation, the Council may instruct the Organisation in writing within 10 (ten) Working Days to comply

with its directions in relation to the Dispute within whatever reasonable period the Council determines. If the Council does not issue such an instruction, the Council and the Organisation may with the written consent of the Council seek to resolve the issue by mediation or expert determination as set out in Clause 64.4 or 64.5 (respectively).

65.4. The Council or the Organisation may within 10 (ten) Working Days of the meeting held under Clause 65.3.2 serve upon the other a notice suggesting that the issue is resolved by mediation. If the party receiving the notice agrees, by counter notice served on the party serving the notice within 5 (five) Working Days of that notice, to go to mediation:

65.4.1 either party may notify the Centre for Effective Dispute Resolution (“**CEDR**”) and request that a mediator be appointed;

65.4.2 any such mediation shall be conducted in accordance with the CEDR Model Mediation Procedure;

65.4.3 the mediation shall be deemed to have commenced upon the notification to both parties in writing of the appointment of a mediator by the CEDR;

65.4.4 any mediation shall be completed within 25 (twenty five) Working Days of such referral or such longer period as the parties may agree;

65.4.5 the parties shall not be bound to participate in a mediation and the refusal by either any party to participate in a mediation, or the withdrawal by either party from a mediation shall not be a breach of this Agreement; and

65.4.6 any terms of settlement arising from such mediation shall be recorded in writing and signed on behalf of the Council and the Organisation and shall be final and binding on the Parties in relation to the Dispute or the breach which was the subject of such mediation.



- 65.5 If the Council does not give a direction in relation to a Dispute under Clause 65.3.3, neither party serves a notice proposing mediation under Clause 65.4, the recipient of such notice does not serve a counter notice agreeing to resolve the issue by mediation or the mediation does not resolve the issue, the Dispute or breach shall be referred to an expert (“the Expert”) in accordance with the following:
- 65.5.1 the identity of the Expert shall be agreed upon by the parties or in default of such agreement within 10 (ten) Working Days of a notice from either party to the other served no earlier than 10 Working Days after the meeting held under Clause 66.3.2 and proposing at least 2 (two) possible experts, shall be nominated by the President for the time being of the Chartered Institute of Housing or a person appointed by such President;
  - 65.5.2 the Council and the Organisation shall each promptly give the Expert (imposing such obligations of confidentiality as they wish) all information reasonably requested by the Expert relating to the Dispute;
  - 65.5.3 the Expert shall act immediately and may take the initiative in ascertaining the facts and the law relevant to the Dispute or the breach;
  - 65.5.4 the Expert shall be entitled to make such decision or award as the Expert thinks just and equitable having regard to all the circumstances then existing;
  - 65.5.5 the parties must require the Expert to use all reasonable endeavours to give a decision within 20 (twenty) Working Days following receipt of the information requested or (if this is not possible) as soon after that as reasonably practicable and both parties shall co-operate fully with the Expert to achieve this objective;
  - 65.5.6 in relation to costs:
    - 1. each party shall bear its own costs arising out of the reference;
    - 2. the fees and expenses of the Expert shall be shared equally by the Council and the Organisation except to the extent that, as a result of the decision reached, the Expert decides that either party should bear all or a greater proportion of the costs of the reference; and

.10 any award of costs under ClauseXX shall be reflected in a variation to the then current Delivery Plan;

65.6 any award or decision of the Expert under this Clause shall be final and binding on both parties save in the event of fraud or a mistake of law; and

65.7 the Expert shall not be liable for anything done or omitted in the discharge or purported discharge of his/her functions as Expert unless the act or omission is in bad faith, and any employee or agent of the Expert is similarly protected from liability.

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

### **66 NOTICES**

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

66.2 Notices served under Clause 66.1 shall be sent by first class recorded delivery mail (or equivalent). All other notices shall be sent by such means as the sending party deems appropriate.

### **67 SEVERANCE**

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

### **68 PARTNERSHIPS**

Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties hereto and save as expressly provided nothing in this Agreement shall be deemed to make the

Organisation the agent of the Council or authorise the Organisation (a) to incur any expenses on behalf of the Council (b) to enter into any engagement or make any representation or warranty on behalf of the Council or (c) to commit or bind the Council in any way whatsoever without in each case obtaining the Council's Representative's prior written consent.

## **69 SURVIVAL OF THIS CONTRACT**

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

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

## **70 LAW**

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

## **71 CONCURRENT REMEDIES**

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

## **72 ENTIRE AGREEMENT**

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

## PART O– TERMS USED ETC

### 73 DEFINITIONS AND INTERPRETATION

73.1 The definitions are as follows:

**“Agreement”**

means this Agreement (including the Schedules and Annexes) and any variations in accordance with Clauses XX and XX

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

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

**“Audit Commission”**

means the independent public body responsible for ensuring that public money is spent economically, efficiently, and effectively in the areas of local government, housing, health, criminal justice and fire and rescue services.

**“Best Value”**

means the Council’s functions in Part I LGA 1999.

**“Best Value Performance Indicators”**

means the best value performance indicators and standards specified by the Secretary of State under section 4 LGA 1998; Audit Commission performance indicators and other information required by the Audit Commission under sections 44 – 46 Audit Commission 1998; the local performance indicators developed by the Council, details of such local performance indicators which shall have been communicated in writing by the Council to the Operator.

**“Best Value Performance Plan”**

means a best value performance plan required to be prepared by the Council in accordance with section 6 LGA 1999.

**“Best Value Review”**

means a best value review required to be prepared by the Council in accordance with section 5 LGA 1999.

**“Board Members of the Organisation”**

means those individuals appointed and/or elected to serve as board members of the Organisation in accordance with the Organisation’s Memorandum and Articles of Association.

**“Capital Programme Proposals”**

means the Council’s expenditure proposals for its capital works programme.

**“Capital Report”**

means the report which sets out the Council’s housing capital expenditure for the next 3 financial years.

**“Commencement Date”**

means 1 December 2007.

**“Confidential Information”**

means information communicated by either party to the other on the basis that it is confidential.

**“Contracts”**

means the contracts for goods and/or services relating to the Undertaking which may be entered into by the Council from time to time and as notified by the Council’s Representative to the Organisation

**“Council Guidelines”**

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

to time, as any of the same may from time to time be amended by the Council and notified to the Organisation.

**“Council’s Computer Systems”**

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

**“Council’s Data”**

means any information or data compiled by or on behalf of the Council in connection with the Services.

**“Council’s Emergency Officer”**

means the Chief Executive of the Council or such other individual as the Council may appoint from time to time.

**“Council’s Representative”**

means the person nominated pursuant to Clause XX

**“Council’s Software”**

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

**“Delivery Plan”**

means the annual document so entitled which describes the outputs to be achieved by means of the Services to be provided by the Organisation and any variations of such document made pursuant to Clause 61 for each year of the Agreement.

**“Dispute Resolution Procedure”**

means the procedure for liaison and Dispute resolution set out in Clause XX.

**“DPA”**

means the Data Protection Act 1998.

**“Dwelling”**

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

**“Enabling Acts”**

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

**“Executive Team”**

means the senior management team of the Organisation which shall be the Chief Executive of the Organisation and the next tier of senior officers reporting directly to the Chief Executive.

**“Expert”**

means an individual appointed in accordance with Clause 67.

**“FOIA”**

means the Freedom of Information Act 2000.

**“Guidance”**

means the guidance entitled “Guidance on Arms Length Management of Local Authority Housing” and any subsequent guidance which amplifies, modifies or replaces the same.

**“Housing Capital Programme of Works”**

means the annual three year programme for capital works to Dwellings.

**“Housing Inspectorate”**

means that part of the Audit Commission responsible for the inspection of local housing.

**“Housing Revenue Account”**

means the account maintained by the Council in accordance with and as defined in section 74 of the Local Government and Housing Act 1989.

**“HRA Budget Report”**

means the Council’s annual Housing Revenue Account budget report.

**“Know-how”**

means all information (including that comprised in or derived from data, disks, tapes, manuals, source codes, flow-charts, catalogues and instructions) relating to the Undertaking and the Services.

**“Lease / Licences”**

means the lease and/or licences to be granted pursuant to Clause 44 in substantially the forms set out in the Fifth Schedule.

**“LGA 1999”**

means the Local Government Act 1999.

**“LGPS”**

means the Local Government Pension Scheme.

**“Management Fee”**

means the payment(s) to the Organisation by the Council in consideration for the performance of the Services as more particularly described in the Fourth Schedule.

**“Organisation’s Representative”**

means the person who is to represent the Organisation appointed pursuant to Clause 19.



**“Organisation Transferring Employees”**

means any employees of the Organisation transferring to a Subsequent Employer as described in Clause XX

**“Personal Data”**

has the meaning given in the DPA.

**“Performance Indicators”**

means the Best Value Performance Indicators together with any other key performance indicators, definitions, targets, calculations etc relating to the provision of the Services and contracts as set by the Council’s Representative from time to time.

**“Premises”**

means the offices and other premises described in the First Schedule and comprised in the form of Lease set out in the Fifth Schedule.

**“Protection of Earnings Policy”**

Means three years to employees redeployed pursuant to the Redeployment Procedure.

**“Redeployment Procedure”**

means the Council’s procedure for the redeployment of employees

**“Regulations”**

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

**“Relevant Tenant Representative Body”**

means the Barnsley Federation of Tenants and Residents Association or any successor body thereto or such other body as the Council shall from time to time resolve to be representative of the tenants of Barnsley Metropolitan Borough Council whose dwellings are managed by the Organisation.

**“Request for Information”**

has the meaning given in the FOIA.

**“Services”**

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

**“Service Review”**

means the review of the Services provided by the Organisation to be produced by the Organisation and which is described in Clause 7.

**“Standing Orders and Financial Regulations”**

means the Council’s documented orders and regulations which must be complied with by the Organisation to the extent that they apply to the subject matter of this Agreement.

**“Tenancy Conditions”**

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

**“Tenant Compact”**

means a signed formal agreement between Berneslai Homes and tenants and leaseholders of Barnsley Metropolitan Borough Council setting how they can be involved in local decisions that relate to their homes.

**“Tenant Management Organisation”**

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

**“Term”**

means the period commencing on the Commencement Date and expiring on 31 October 2012 subject to earlier termination as herein provided

**“Transferring Employees”**

means the employees occupying the posts listed in the Second Schedule.

**“Undertaking”**

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

**“Working Day”**

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

- 73.2 Reference to the Organisation’s personnel shall be deemed to include the Organisation’s directors and employees and the Organisation’s agents, sub-contractors and essential visitors (as referred to in Clause 39.2) unless the context otherwise requires.
- 73.3 The Agreement shall be governed by and construed in accordance with English Law, and the English courts shall have jurisdiction over any dispute or difference which shall arise between the Council or the Council’s Representative and the Organisation out of or in connection with the Agreement.
- 73.4 A reference to the Enabling Acts or any other Act of Parliament, or to any Order, Regulation, Statutory Instrument, or the like, shall be deemed to include a reference to any amendment, re-enactment, consolidation, variation, replacement or extension of the same respectively from time to time and for the time being in force.

- 73.5 Words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include firms and corporations.
- 73.6 References to Clauses, Schedules and Annexes shall be deemed to be references to the Clauses in and the Schedules and Annexes to this Agreement as so numbered.
- 73.7 In this Agreement headings are included for ease of reference only and shall not affect this Agreement or the interpretation thereof.

**IN WITNESS** whereof these presents have been executed as a Deed and delivered the day and year first before within.

**THE COMMON SEAL of BARNSELY** )  
**METROPOLITAN BOROUGH** )  
**COUNCIL** was hereunto affixed )  
in the presence of: )

**EXECUTED by BERNESLAI HOMES LIMITED** )  
Acting by:  
.....  
Director  
.....  
in the presence of: .....

## FIRST SCHEDULE

## PREMISES AND OTHER PROPERTY INFORMATION

**SECOND SCHEDULE**

**TRANSFERRING EMPLOYEES**



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

**FOURTH SCHEDULE  
FINANCIAL ARRANGEMENTS**

**FIFTH SCHEDULE**  
**FORM OF LEASE/LICENCE FOR PREMISES**

**Service Level Agreement for occupation of Council owned or leased Administrative Buildings**

**Premises occupied by Berneslai Homes within Council owned or Leased Buildings.**

1. Berneslai Homes Ltd (hereafter called the tenant) shall be granted an agreement of office and other space commencing the 1<sup>st</sup> December 2007.
2. The accommodation to be occupied is that identified on the attached plans.
3. A right of access will be granted in common with other users over reception, corridors and staircases within the premises. A right to use the toilet facilities within the building is also granted, together with car parking facilities as may jointly be agreed between Berneslai Homes and The Council.
4. The annual rent will agreed between Berneslai Homes and the Council and will be based on the annual council administration buildings charge.
5. The Administrative buildings charge is on an all inclusive basis to include all rates, heating, lighting, ventilation, insurance, repairs and maintenance, cleaning, collection and disposal of waste and window cleaning.
6. The tenant will maintain a level of public liability insurance not less than £5 million.
7. The accommodation is to be used solely in connection with the Tenant occupation as a Housing ALMO, within normal office hours, together with any other times as agreed with the Council.
8. The tenant is to be responsible for the insurance of their own fittings and office contents.
9. The agreement may be terminated by either party giving 6 months notice to the other at any time, subject to the exception as detailed in clause 14.
10. The Council (either directly or through the building owners) will be responsible for maintaining the premises, its external walkways, drives, landscaping and car parks.
11. The tenant shall not assign, sublet or otherwise part with possession of the said accommodation or any part thereof.
12. The Tenant will be responsible for the conduct of their visitors attending the premises.
13. The tenant shall not alter or refit the premises without the written consent of the Council, which shall not be unreasonably withheld.

14. In the event of the Council not being able to provide accommodation at the premises detailed in the schedule it may serve 6 months notice of its intentions or it will take all reasonable steps to provide alternative accommodation to the Tenant.

**Schedule of Premises.**

Springfield House.

Berneslai Homes will continue to occupy HRA dwellings as part of their ongoing management of the HRA and delivery of HRA services, including

Cudworth area housing office  
St Edwins Council Offices  
Wombwell Council Offices  
Sheltered Housing complex's at \_

Estares offices at

Barnsley Metropolitan Borough Council

Administrative Building Charging Structure

Any Admin Building	£ per m <sup>2</sup> (NIA)
<p>Fixed Charges</p> <p>1. Rent Commercial Rate, includes building rent, planned maintenance, notional interest, depreciation etc.</p> <p>2. Facilities Management Services See separate schedule.</p>	
Sub total (fixed charges)	
<b>Actual Costs</b>	
<p>3. Insurance Actual insurance costs – allocated on a building-by-building basis (or square metre basis for multi-occupancy buildings).</p> <p>4. Utilities (excluding telephones) Actual utilities costs – for the building (or square metre basis for multi-occupancy buildings). This is to encourage occupants to reduce their costs through effective use of resources.</p> <p>5. Business rates Actual utilities costs – for the building (or square metre basis for multi-occupancy buildings).</p>	
Sub total (actual charges)	
Fixed Charges	
Actual Costs	
Total annual charges & costs for Any Admin Building	
6. Supplementary Services – would be individually priced and shown separate on recharge/invoice	

<ul style="list-style-type: none"> <li>• Reception Services</li> <li>• Porterage</li> <li>• Daytime security</li> <li>• Hospitality Services</li> <li>• Mail processing, collection and distribution services</li> <li>• Car park control</li> <li>• Stationery management, photocopier maintenance and replenishment, room and equipment booking.</li> </ul>	
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**APPENDIX TO SERVICE LEVEL AGREEMENT FOR ADMINISTRATIVE BUILDING OCCUPANTS**

All administrative buildings include facilities management services. Both hard and soft FM services are catered for as an integrated managed service provided by Barnsley MBC (the Landlord). The cost of the FM Service is recovered through the tenant’s rent and a service charge, based on the floor space occupied.

**Building Services Facilities Management**

The scope of the hard FM services includes the provision of maintenance to the building services, including both planned and unplanned maintenance, general upkeep, statutory tests and inspections, energy and utilities management and asset management services.

Barnsley MBC will provide these services:

**Planned preventative and reactive mechanical and electrical plant maintenance, including to the following plant and systems:**

- Lighting
- Heating
- Ventilation
- Air conditioning (if fitted)
- Extract systems
- Fire alarm and detection systems
- Fire extinguishing flooding systems

- Wet and dry risers
- Water systems and water treatment
- Lightning conductors
- Electrical power and distribution
- Fixed electrical equipment owned by BMBC in communal areas
- Uninterruptible Power Supplies (UPS)
- Standby generator
- Building Management Systems
- Security equipment and systems, including:
  - Closed Circuit Television Systems (CCTV)
  - Intruder detection and alarm systems
  - Access control systems
  - Turnstiles, barriers and gates
- Pressure systems
- Permanently Installed Suspended Access Equipment, including:
  - Lifting equipment
  - Safety anchor devices
  - Safety restraint lines/anchors
- Gas appliances, supplies and systems
- Sewage and foul water systems
- Low voltage equipment
- Hydraulic systems
- High voltage equipment
- Clean rooms

**Statutory test and inspection, and appropriate remedial maintenance, or replacement, or uplift including to the following items:**

- Fixed electrical equipment owned by BMBC in communal areas
- Fixed electrical installations
- Emergency lighting installations
- Fire extinguishers
- Fire alarms
- Fire doors
- Fire zoning
- High voltage equipment (HV)
- Permanently Installed Suspended Access Equipment, including:
  - Lifting equipment
  - Safety anchor devices
  - Safety restraint lines/anchors
- Pressure vessels and systems
- Lifts
- Lifting equipment
- Water systems
- Chimneys
- Lightning protection systems
- Storage tanks

- Supporting insurance inspections, e.g. Pressure systems, lifts and the like

Planned preventative and reactive lift maintenance, including to the following plant:

- Electric lifts
- Hydraulic lifts
- Escalators

Energy Management, including undertaking:

- Energy surveys and audits
- Site based consumption monitoring, recording and reporting
- Building, energy and utilities management systems operation
- Promote energy saving initiatives
- Monitoring and recording fuel storage and usage
- Monitoring and recording emissions to air

Asset Management, including:

- Inspections
  - Inspections and reviews of plant condition
  - Inspections and reviews of building and fabric condition
- Management of all warranty terms and conditions that may apply for all installed assets whilst warranty/defect liability periods are effective
- Maintenance of and updating of an assets register of all plant, detailing the plant, items, location and the area the plant serves and label all installed plant with a unique asset number

### **Soft Services Facilities Management**

The facilities management provider will deliver these soft facilities management services.

Statutory testing and inspection of portable electrical appliances owned by the tenants

Cleaning (routine & periodic) of:

- Offices
- Stores
- Equipment rooms
- Plant rooms
- Toilets and staff kitchens
- Training rooms

Building security services, including:

- Control of security keys
- Security key audits



- Combination lock changes
- Response to intruder alarms
- Initial survey and investigation following burglary
- CCTV monitoring
- Alarm monitoring

Window cleaning

Pest control

Grounds and Site maintenance, including:

- Maintenance of cultivated areas
- Maintenance of paths, drives, roads, gates, fences and walls
- Litter clearance
- Snow and ice clearance
- Maintenance of external signage

Overall waste management, including:

- Business waste
- Confidential waste
- Secure data destruction
- Feminine hygiene, provision and disposal
- Recycling
- Waste minimisation

Fabric maintenance, internal and external, to the properties, including:

- Floors, walls, ceilings, roofs
- Windows
- External doors, locks and keys
- Internal doors, locks, keys
- Fire doors
- Fire compartments
- Fire stopping
- Toilets, sinks and showers
- Gutters
- Rain and surface water systems
- Drains and sewers

Fixtures and fittings maintenance, including to the following items:

- Fire equipment
- Floor coverings
- Wall coverings
- Internal signage in communal areas
- Notice boards in communal areas
- Pictures and wall hangings in communal areas
- Permanent and temporary displays and hoardings in communal areas

Day-to-day facilities services, including:

- Fuel delivery management and supervision
- Utility meter readings
- Asset labelling
- Distribution and display of corporate posters

General housekeeping, including maintenance and display of:

- Building inspections
- Notice boards
- Corporate signage
- Statutory signage
- Statutory notices management and provision of television licences

Building management services, including undertaking:

- Fire safety management, including carrying out:
  - Fire precautions measures
  - Fire alarm tests
  - Fire drills
  - Fire warden support
  - Fire awareness training
- First aid support
- Statutory risk assessment of communal areas
- Maintenance of fire packs
- Management of site and building related disability issues, including disabled access

Space management, including:

- Optimise utilisation within the properties
- Encouragement and support of flexi/ hot desking and touchdown
- Maintenance of property system records
- Carrying out of occupation surveys

Plant and building maintenance, uplift and refurbishment, including:

- Demand management
- Programme and project management
- Planning

### **Supplementary services available on request (charged separately)**

- Reception
- Security guards (fixed and/or mobile)
- Visitor and temporary pass cards
- Internal planting
- Porterage
- Mail management
- Client supplied stationary management
- Replenishment of client supplied consumables (paper & toner) for copier, printer, fax machines
- Management of:
  - Audio visual equipment
  - Printers
  - Car parks
  - Conference and meeting rooms
  - Flexi desk and touchdown
  - Building manuals
- Catering services, including:
  - Café
  - Vending
  - Hospitality

**SIXTH SCHEDULE  
USE OF COUNCIL'S COMPUTERS**

**ANNEX 1**  
**DELIVERY OF PLAN FORMAT**

## **ANNEX 2**

### **HOUSING MANAGEMENT RESPONSIBILITIES DELEGATED TO THE ORGANISATION**