

DATED

1 April

2004

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF
BARNET (1)**

- and -

BARNET HOMES LIMITED (2)

**AGREEMENT FOR
HOUSING MANAGEMENT AND OTHER SERVICES**

TROWERS & HAMLINS

Sceptre Court
40 Tower Hill
London EC3N 4DX

Tel: 020 7423 8000

Fax: 020 7423 8001

www.trowers.com

idoollittle@trowers.com

CONTENTS

| CLAUSE | PAGE |
|--|-----------|
| PART A – PARTNERSHIP IN DELIVERY BETWEEN THE ORGANISATION AND THE COUNCIL..... | 1 |
| 1. THE DELIVERY PLAN..... | 1 |
| 2. COMMITMENT TO THE COMMUNITY..... | 2 |
| 3. EQUAL OPPORTUNITIES..... | 2 |
| 4. TENANT INVOLVEMENT..... | 3 |
| PART B – PERFORMANCE RESPONSIBILITIES OF THE COUNCIL | 4 |
| 5. DUTY OF BEST VALUE..... | 4 |
| PART C – PERFORMANCE RESPONSIBILITIES OF THE ORGANISATION | 4 |
| 6. DUTY OF BEST VALUE..... | 4 |
| 7. FUTURE DELIVERY PLANS | 5 |
| 8. THE ANNUAL PERFORMANCE PLAN | 6 |
| 9. THE BEST VALUE REVIEWS | 8 |
| 10. PERFORMANCE INDICATORS..... | 8 |
| 11. OFFICIAL RETURNS, HOUSING INSPECTIONS ETC | 8 |
| PART D – STRATEGIC RESPONSIBILITIES OF THE ORGANISATION | 9 |
| 12. ADVICE AND SUPPORT IN DEVELOPING CORPORATE STRATEGIES AND REVIEWS IN THE COUNCIL | 9 |
| 13. REPRESENTING THE COUNCIL IN RELATED OR PARTNERSHIP ACTIVITY..... | 9 |
| PART E – STRATEGIC RESPONSIBILITIES OF THE COUNCIL | 10 |
| 14. CONSULTATION WITH STATUTORY AND OTHER BODIES | 10 |
| 15. CONSULTATION WITH TENANTS | 10 |
| PART F – RESPONSIBILITIES OF THE ORGANISATION | 10 |
| 16. FUNCTIONS DELEGATED | 10 |
| 17. PROVIDING THE SERVICES | 10 |
| 18. STATUTORY REQUIREMENTS | 13 |
| 19. VARIATIONS TO TENANCY AGREEMENTS | 13 |
| 20. THE ORGANISATION'S PERSONNEL..... | 13 |
| 21. CONTROL AND SUPERVISION OF THE ORGANISATION'S PERSONNEL | 14 |
| 22. USE OF ASSETS..... | 15 |
| 23. USE OF COUNCIL'S ASSETS | 16 |
| 24. CONTRACTS TO BE ADMINISTERED | 17 |
| 25. ASSIGNMENT AND SUB-CONTRACTING ETC..... | 17 |

| | | |
|---|--|----|
| 26. | USE OF COMPUTER SYSTEMS AND SOFTWARE | 18 |
| 27. | DATA..... | 20 |
| 28. | DATA PROTECTION..... | 20 |
| 29. | CONFIDENTIALITY..... | 21 |
| 30. | HEALTH AND SAFETY | 21 |
| 31. | INSURANCES..... | 21 |
| 32. | HOUSING INSPECTION | 23 |
| 33. | PROVISION OF INFORMATION..... | 23 |
| 34. | FRAUD..... | 24 |
| 35. | COMPLAINTS..... | 25 |
| 36. | LEGAL INVESTIGATIONS..... | 25 |
| 37. | AGENCY..... | 26 |
| 38. | SECURITY | 26 |
| PART G – RESPONSIBILITIES AND RIGHTS OF THE COUNCIL | | 27 |
| 39. | FAILURE TO PERFORM..... | 27 |
| 40. | PROVISION OF INFORMATION..... | 27 |
| 41. | ASSIGNMENT..... | 27 |
| 42. | USE OF PREMISES | 27 |
| 43. | HOUSING INSPECTION | 27 |
| 44. | AUDITS..... | 28 |
| 45. | SERVICES SUPPLIED BY COUNCIL..... | 28 |
| 46. | INTELLECTUAL PROPERTY RIGHTS..... | 28 |
| 47. | RIGHT TO USE DOCUMENTS..... | 28 |
| 48. | RIGHT TO USE PREMISES..... | 29 |
| 49. | EXCLUSION OF LIABILITY..... | 30 |
| 50. | RIGHTS AND DUTIES RESERVED | 30 |
| 51. | WAIVER..... | 30 |
| PART H – FINANCIAL ARRANGEMENTS AND OTHER MATTERS..... | | 30 |
| 52. | FINANCIAL ARRANGEMENTS..... | 30 |
| 53. | RECOVERY OF RENT AND PAYMENT OF FEE | 30 |
| 54. | RIGHT TO USE SURPLUSES..... | 31 |
| 55. | INTEREST ON OVERDUE PAYMENTS | 31 |
| 56. | VALUE ADDED TAX | 31 |
| PART I – EMPLOYMENT AND STAFFING..... | | 31 |
| 57. | EMPLOYEES..... | 31 |
| 58. | INFORMATION ABOUT EMPLOYEES..... | 35 |

| | | |
|-----|---|----|
| 59. | RIGHT TO REPRESENTATION..... | 35 |
| | PART J – MONITORING AND MANAGEMENT..... | 35 |
| 60. | MEETINGS BETWEEN COUNCIL AND ORGANISATION..... | 35 |
| 61. | COUNCIL’S REPRESENTATIVE..... | 35 |
| | PART K – TMOs..... | 36 |
| 62. | TENANT MANAGEMENT ORGANISATIONS | 36 |
| | PART L – TERM | 37 |
| 63. | DURATION AND RENEWAL..... | 37 |
| | PART M – VARIATIONS ETC | 37 |
| 64. | VARIATIONS | 37 |
| 65. | ALTERATIONS..... | 39 |
| 66. | TERMINATION ETC. | 39 |
| 67. | VARIATION OF CONTRACT | 41 |
| 68. | DISPUTE RESOLUTION..... | 42 |
| | PART N – NOTICES AND OTHER MATTERS | 42 |
| 69. | NOTICES..... | 42 |
| 70. | SEVERANCE | 42 |
| 71. | PARTNERSHIPS..... | 43 |
| 72. | SURVIVAL OF THIS CONTRACT | 43 |
| 73. | LAW | 43 |
| 74. | CONCURRENT REMEDIES..... | 43 |
| 75. | ENTIRE AGREEMENT | 43 |
| 76. | RIGHTS OF THIRD PARTIES | 43 |
| 77. | NOMINATION RIGHTS AND AGREEMENTS | 44 |
| 78. | VARIATIONS TO TENANCY CONDITIONS | 44 |
| 79. | INFORMATION IN TENANTS’ HANDBOOK..... | 44 |
| 80. | INFORMATION FOR PROSPECTIVE TENANTS | 44 |
| 81. | TRANSFERS AND MUTUAL EXCHANGES | 44 |
| 82. | CONSULTATION WITH OTHER HOUSING SERVICE PROVIDERS..... | 44 |
| 83. | COMPARISON EXERCISES WITH OTHER HOUSING SERVICE PROVIDERS | 44 |
| | PART P –TERMS USED ETC | 45 |
| 84. | DEFINITIONS AND INTERPRETATION | 45 |
| | THE FIRST SCHEDULE..... | 52 |
| | CONTRACTS TO BE ADMINISTERED | 52 |
| | THE SECOND SCHEDULE..... | 53 |
| | COUNCIL’S ASSETS | 53 |

| | |
|---|----|
| THE THIRD SCHEDULE | 54 |
| PREMISES AND OTHER PROPERTY INFORMATION..... | 54 |
| THE FOURTH SCHEDULE | 55 |
| TRANSFERRING EMPLOYEES ETC | 55 |
| THE FIFTH SCHEDULE | 58 |
| COMPUTER SYSTEMS AND SOFTWARE CURRENTLY USED BY THE COUNCIL | 58 |
| THE SIXTH SCHEDULE..... | 59 |
| FINANCIAL ARRANGEMENTS..... | 59 |
| THE SEVENTH SCHEDULE | 60 |
| FORM OF LICENCE FOR PREMISES..... | 60 |
| THE EIGHTH SCHEDULE | 61 |
| USE OF COUNCIL'S COMPUTERS | 61 |
| THE NINTH SCHEDULE | 62 |
| SERVICES SUPPLIED BY COUNCIL..... | 62 |
| ANNEX 1 | 63 |
| THE INITIAL DELIVERY PLAN..... | 63 |
| ANNEX 2 | 64 |
| THE DELIVERY PLAN FORMAT..... | 64 |
| ANNEX 3 | 66 |
| DELEGATION AGREEMENT | 66 |
| ANNEX 4 | 69 |
| TENANT COMPACT | 69 |
| ANNEX 5 | 70 |
| EQUAL OPPORTUNITY POLICY | 70 |

THIS AGREEMENT is made the

day of

BETWEEN:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET** acting by the Council of the said Borough of Town Hall, Hendon, NW4 4BG ("the Council"); and
- (2) **BARNET HOMES LIMITED** whose registered office is situate at Barnet House, 1255 High Road, Whetstone, N20 0EJ ("the Organisation").

WHEREAS

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

IT IS AGREED as follows:-

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

1. THE DELIVERY PLAN

The Organisation shall deliver the Delivery Plan which in its initial form is set out in Annex 1 and which as to its format for future years is set out in Annex 2. The Delivery Plan:-

- 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 Council's Community Strategy contains the key objectives of this relationship. The Organisation has a duty to help deliver those objectives. The Organisation through the Delivery Plan and the Annual Performance Plan will ensure that all its policies and activities support the objectives of all relevant Council strategies ("the Strategies") including (but not exclusively) the Community Strategy and those other strategies which are entitled, relate to or are the equivalent of the following:-

- Housing;
- Economic Development;
- Anti Poverty;
- Social Inclusion;
- Crime & Disorder
- Neighbourhood Renewal;
- Tenant Empowerment;
- Home Energy Efficiency;
- New Deal for Communities;
- Child Support;
- Older People;
- Supporting People
- Health and Housing

For such purposes the Organisation shall:-

- 2.1 ensure all staff are trained and understand the Strategies;
- 2.2 provide information to help the Council up date and develop the Strategies;
- 2.3 demonstrate in the Annual Performance Plan how resources will be used to meet the objectives of the Strategies.

3. EQUAL OPPORTUNITIES

The Council has a strong commitment to equal opportunities and in providing the Services the Organisation shall operate equal opportunity policies and procedures in all aspects of its work. By implementing these policies and procedures the Organisation shall ensure that it does not discriminate against any person or other organisation on the grounds of race, ethnic origin, disability, nationality, gender, sexuality, age, class, appearance, religion, responsibility for dependants, unrelated

criminal activities, being HIV positive or having AIDS, or any other matter which causes a person to be treated with injustice.

- 3.1 The Organisation shall follow the best professional practice in relation to equal opportunities and in particular (but without limitation) shall comply with:-
 - 3.1.1 all relevant legislation as well as statutory and other official guidance and codes of practice;
 - 3.1.2 the Council's own equal opportunities policies as the same may be adopted and amended from time to time.
- 3.2 The Organisation's Equal Opportunity Policy forms Annex 5. The application of this policy must include how the Organisation:-
 - 3.2.1 employs and recruits staff;
 - 3.2.2 deals with board membership and other issues arising from its constitution;
 - 3.2.3 handles racial disputes and harassment;
 - 3.2.4 commissions contractors, consultants and agents;
 - 3.2.5 implements the Delivery Plan.
- 3.3 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**

The Council has a partnership with its tenants and leaseholders and to further this relationship the Organisation will honour its own Tenant Compact (based on the Council's existing Compact) so as to support and encourage tenant involvement. The initial form of the Organisation's Tenant Compact forms Annex 4 and the Delivery Plan will identify sufficient resources to ensure that the objectives of the Organisation's Tenant Compact are met.

- 4.1 The Organisation's 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.
- 4.2 The Organisation's Tenant Compact objectives will be reviewed and consulted upon annually and sufficient resources will be identified in the Delivery Plan to deliver these objectives.
- 4.3 The Organisation's Tenant Compact will include strategies for involving 'difficult to reach' groups and those tenants who do not normally get involved in the management of their homes.

- 4.4 A summary of the Annual Performance Plan will be provided to the Council Representative for approval and on receipt of approval will be forwarded to every household affected.

PART B – PERFORMANCE RESPONSIBILITIES OF THE COUNCIL

5. DUTY OF BEST VALUE

- 5.1 The Council has a duty of Best Value and must make arrangements to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness. In discharging its responsibilities under this Agreement the Organisation must also make the same arrangements to secure Best Value.
- 5.2 The Council following the receipt of the Annual Performance Plan will consider whether the Council through the Organisation should continue to exercise a particular function or service and will consider the level and the way in which it should exercise that function or service. The Council will also consider its objectives and strategies in relation to that function. Any variations to this Agreement following such consideration shall be effected in accordance with Clause 64.
- 5.3 The Annual Performance Plan shall be agreed and the Best Value Reviews shall be carried out in accordance with Clauses 8 and 9 respectively. In the event of an extension to this Agreement and wherever the Council so requests the Organisation will carry out any best value reviews of the Organisation's housing management function which the Council is required by statute to carry out or which the Council reasonably requires.

PART C – PERFORMANCE RESPONSIBILITIES OF THE ORGANISATION

6. DUTY OF BEST VALUE

- 6.1 In discharging its responsibilities under the Agreement the Organisation 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.
- 6.2 With the exception of those services provided by the Council to the Organisation at the Commencement Date, in respect of which the services will continue to be provided until such time as the Organisation or the Council give notice in accordance with the relevant service agreement in the event that the Organisation is minded to purchase any service from any person or body, the Organisation shall
- (a) ensure that any services supplies or works that it purchases or procures, including for the avoidance of doubt any architectural, legal, financial or other professional services, achieve Best Value and demonstrate good value for money in terms of both price and quality, and

- (b) in purchasing or procuring any such services supplies or works the Organisation shall comply with relevant European and domestic legislation and with its own Standing Orders and Financial Regulations.

7. FUTURE DELIVERY PLANS

- 7.1 The Organisation shall provide to the Council's Representative by 1 November 2004 an initial draft of the Annual Sections of the Delivery Plan for the first year following the Commencement Date in the Delivery Plan Format. The sections of the Delivery Plan comprising the financial plan the performance plan and the resourcing plan will be received on this annual basis. The section of the Delivery Plan comprising the service delivery plan shall be reviewed concurrently with the other sections unless the Delivery Plan Format provides for more frequent reviews (in which event the parties shall carry out such review procedures as are stipulated in the Delivery Plan Format and the annual reviews provided for below in this Clause shall accommodate the result of intervening reviews). The section of the Delivery Plan comprising the capital programme will be reviewed so as to enable the Council (a) to make its housing investment programme bid to the Government in July each year and (b) to settle the revenue and capital programme, fix rents and determine the following year's schemes in January each year in response to the Housing Revenue Account subsidy announcement by the Government in the preceding December. After the first year the Organisation shall provide to the Council by 1 November in each calendar year a draft of the Annual Sections of the Delivery Plan for the year following the next anniversary of the Commencement Date in the Delivery Plan Format.
- 7.2 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 64.
- 7.3 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.
- 7.4 The Council shall give due consideration to the draft Delivery Plan and shall within fifteen (15) Working Days of receipt of the Annual Sections of the Delivery Plan notify the Organisation as to whether such sections are agreed.
- 7.5 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.
- 7.6 Senior officers of the Council and the relevant tenant representative body will meet with nominated Board Members of the Organisation and the Chief Executive of the Organisation by 31 July in each calendar year 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.

- 7.7 This meeting will form part of a series of meetings between senior officers of the Council the relevant tenant representative body nominated Board Members of the Organisation and the Chief Executive of the Organisation (the "Delivery Plan Meetings"). The Delivery Plan Meetings will take place once every month (or more or less frequently if required by other provisions of this Agreement or otherwise reasonably requested by either the Council or the Organisation).
- 7.8 Where the Council is not satisfied with the Organisation's performance following the review in Clause 7.6 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.
- 7.9 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.
- 7.10 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.
- 7.11 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.¹
- 7.12 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.

8. THE ANNUAL PERFORMANCE PLAN

- 8.1 Throughout the Term of this Agreement 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.

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

- 8.2.1 an analysis of the Organisation's objectives in respect of the Services;

¹ This is wide but is viewed as necessary by ODPM in view of the Council's best value duty.

- 8.2.2 an analysis of the Services throughout the previous twelve months, focusing on those areas which were successful and unsuccessful;
- 8.2.3 an identification in the Organisation's view of the reason for the successes and failures referred to in Clause 8.2.2 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;
- 8.2.4 performance targets (based on best value indicators as a minimum) for the subsequent year compared with performance in the current year;
- 8.2.5 a timetable of planned Best Value Reviews and a summary of any previous Best Value Reviews;
- 8.2.6 any other matters specified by the Secretary of State under Section 6 of the Local Government Act 1999;
- 8.2.7 an action plan as described in Clause 7.2;
- 8.3 The submission of the Annual Performance Plan by the Organisation to the Council as part of the Delivery Plan shall be without prejudice to any monitoring or performance review which may be carried out by the Council under any of the other terms of the Agreement (including but not limited to Clause 8.5).
- 8.4 The Council will use the Annual Performance Plan in compiling the Council's own annual performance plan and in conducting any of its own best value reviews (whether relating wholly or partly to housing or cross-cutting or otherwise).
- 8.5 At any time following any failure by the Organisation properly to perform its obligations under Clauses 8 and 9 the Council shall be entitled to carry out itself (or to engage a third party to carry out) a review of the Services or any part thereof, including a Best Value Review. The Organisation shall offer all necessary assistance to the Council and any third party in the carrying out of such review and shall attend such meetings and provide such documents and information as may reasonably be necessary for this purpose.
- 8.6 The Organisation shall carry out any measure reasonably required by the Council or recommended by the Secretary of State or the Audit Commission in order to achieve best value and value for money. The Organisation shall co-operate and assist fully with the Council, the Secretary of State and the Audit Commission during any best value inspection.
- 8.7 Any disputes between the parties in relation to this Clause 8 may be referred by either party to the dispute resolution procedure and, if necessary, the Expert in accordance with Clause 68.

9. **THE BEST VALUE REVIEWS**

- 9.1 According to the timetable set out in the Annual Performance Plan and in addition to any requirements in the Delivery Plan Format the Organisation shall conduct Best Value Reviews which enable the Council to:-
- 9.1.1 analyse whether the Organisation should be providing the Services and the level at which the Services are provided;
- 9.1.2 analyse the Organisation's objectives in providing the Services;
- 9.1.3 assess the Organisation's performance in:
- (i) providing the Services by reference to any relevant best value performance indicators
 - (ii) meeting any relevant best value performance standards (including standards which have been specified but do not yet apply)
 - (iii) meeting any relevant best value performance target
- 9.1.4 consult with other best value authorities (as defined in Section 1 of the Local Government Act 1999) and all other appropriate stakeholders and interested parties about the provision of the Services;
- 9.1.5 assess the competitiveness of the Organisation's performance in providing the Services by comparison with similar service providers;
- 9.1.6 meet the Council's statutory obligations to review all functions over a 5 year cycle;
- 9.1.7 address any other matters specified by the Secretary of State under Section 5 of the Local Government Act 1999.
- 9.2 Without prejudice to the specific requirements of Clause 9.1 the Organisation shall assist the Council in conducting any and all of the Council's own best value reviews (whether relating wholly or partly to housing or cross-cutting or otherwise)

10. **PERFORMANCE INDICATORS**

Whenever reasonably requested to do so by the Council the Organisation shall provide to the Council such information and data as are necessary to establish whether or to what extent the Organisation's performances of the Services matches the performance indicators set from time to time for local authority housing services and other similar measures.

11. **OFFICIAL RETURNS, HOUSING INSPECTIONS ETC**

- 11.1 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:-
- 11.1.1 returns to the Office of the Deputy Prime Minister or any successor body thereto;
 - 11.1.2 information required under the Report to Tenants Determination (as revised from time to time);
 - 11.1.3 Housing Revenue Subsidy claim forms;
 - 11.1.4 Housing Investment Programme submissions;
 - 11.1.5 submissions or responses in respect of best value inspections (whether carried out by the Housing Inspectorate or otherwise).
 - 11.2 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.
 - 11.3 The Organisation will provide such information as the Council from time to time shall reasonably require to permit the Council to complete management reports (whether of a regular or cyclical nature) on the provision of the Services.

PART D – STRATEGIC RESPONSIBILITIES OF THE ORGANISATION

12. ADVICE AND SUPPORT IN DEVELOPING CORPORATE STRATEGIES AND REVIEWS IN THE COUNCIL

The Organisation will be a strategic partner of the Council and a significant user of the Council's General Fund 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.

13. 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, for as and projects. This might include (but not be limited to) area and other consultative for as, community safety meetings, regeneration partnerships and social services case conferences.

PART E – STRATEGIC RESPONSIBILITIES OF THE COUNCIL

14. CONSULTATION WITH STATUTORY AND OTHER BODIES

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

14.2 Subject to Clause 14.1 the Organisation shall carry out all other consultations or negotiations with the said statutory or voluntary bodies and shall respond to any enquiries from such bodies in relation to the circumstances of individual tenants or applicants for accommodation on such a basis (as to confidentiality and otherwise) as is appropriate and consistent with both the Organisation's and the Council's legal obligations and duties.

15. CONSULTATION WITH TENANTS

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 about the subject-matter of this Agreement.

PART F – RESPONSIBILITIES OF THE ORGANISATION

16. FUNCTIONS DELEGATED

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

17. PROVIDING THE SERVICES

17.1 In consideration of the Fee the Organisation shall at all times perform the Services to the satisfaction of the Council's Representative in accordance and in compliance with the Contract Standard which shall require the Organisation to perform the Services with all due skill, care and diligence and in accordance and otherwise in compliance with:-

17.1.1 the Delivery Plan and in particular (but without limitation) the key performance requirements of the Services set out therein;

17.1.2 any current best value performance indicators issued by the Government or regulatory body which are relevant to the performance of the Services or any part thereof

17.1.3 Council Guidelines and in particular (but without limitation) those relating to customer care;

- 17.1.4 any reasonable instructions issued to the Organisation by the Council Representative pursuant to or in connection with the Agreement;
- 17.1.5 all legislation;
- 17.1.6 in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council;
- 17.1.7 the Council's strategies listed in clause 2;
- 17.1.8 in good and full co-operation with any other company or consultant engaged by the Council to carry out related or relevant works or services on behalf of the Council; and
- 17.1.9 in a manner which has regard to the interests and welfare of tenants and/or residents and the management and maintenance of the Dwellings to a high standard.
- 17.2 The Organisation shall inform the Council's Representative promptly of and confirm in writing if the Organisation is unable or fails to provide the Services or any part thereof, or if the Organisation is aware of anything of whatsoever nature and whether or not the result of any act or omission on the part of the Council which prevents or hinders or which may prevent or hinder the Organisation from complying with the Agreement giving details of the circumstances, reasons and likely duration. The provision of information under this Clause shall not in any way release or excuse the Organisation from any of its obligations under the Agreement.
- 17.3 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.
- 17.4 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:
 - 17.4.1 all offices and work places of the Organisation for the purpose of monitoring and inspecting work being performed in order to provide the Services;
 - 17.4.2 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;
 - 17.4.3 any personnel or agents of the Organisation for the purpose of interviewing such persons in connection with the provision of the Services;
 - 17.4.4 technology, resources, equipment, systems, and procedures used or proposed to be used in connection with the provision of the Services.

- 17.5 The Organisation shall at all times adopt its own Standing Orders Contract Procedure Rules and Financial Regulations which shall be consistent with those of the Council as the same may from time to time be amended, varied or replaced.
- 17.6 If the Organisation is unable or fails to provide the Services or any part thereof in accordance with the requirements of Clause 17.1, 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 17.6 shall be without prejudice to any other rights or remedies which it may possess.
- 17.7 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.
- 17.8 The Organisation shall provide each year to the Council's Representative a copy of its audited accounts within six months of the relevant accounting reference date. In the event that the Organisation fails to provide accounts in accordance with this Clause 17.8 then, without prejudice to any other rights or remedies available to the Council, the Council's Representative or such persons as may from time to time be nominated by the Council's Representative shall be given access to all and any accounting documents and information in the possession, custody or control of the Organisation.
- 17.9 The Organisation shall maintain such quality management systems and procedures as are appropriate to enable the Organisation to ensure that the Services are always provided to the Contract Standard and the Organisation shall afford the Council full access to such systems and procedures for audit or other purposes. In the event that the Organisation fails to comply with this Clause the Council shall be entitled to:-
- 17.9.1 establish its own quality management systems and procedures, and
- 17.9.2 require the Organisation to use the same.
- 17.10 The Organisation from its own resources shall join and co-operate with the Council in such tenant consultation and liaison as the Council may reasonably require from time to time.
- 17.11 In addition to the agreed procedures for office opening and availability of staff set out in the Delivery Plan, the Organisation will ensure that in the event of any emergency or significant unforeseen difficulty occurring with respect to the delivery of the Services appropriate Organisation personnel will advise the Council's Representative

as a matter of urgency and will continue to take responsibility for the situation until it is agreed by the Council's Representative that responsibility may be handed over to another agency or authority.

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

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

18. STATUTORY REQUIREMENTS

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.

19. VARIATIONS TO TENANCY AGREEMENTS

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

20. THE ORGANISATION'S PERSONNEL

20.1 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.

20.2 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:

20.2.1 the task or tasks such persons have to perform;

20.2.2 all relevant provisions of the Agreement;

20.2.3 all the Council's Guidelines in relation to customer care;

20.2.4 all relevant policies, rules, procedures, standards and Standing Orders and Financial Regulations of the Council;

20.2.5 all relevant rules, procedures, statutory requirements and EC Directives concerning health and safety, including the Council's health and safety policy.

- 20.3 The Council's Representative shall, upon giving notice in writing, have the power to require the Organisation (but not unreasonably or vexatiously) to remove from the provision of the Services or a specified part thereof any personnel of the Organisation specified in such notice, including the Organisation's Representative. The Organisation shall forthwith remove such personnel from the provision of the Services or the specified part thereof and shall immediately provide a replacement unless the Council determines otherwise.
- 20.4 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 of its personnel engaged in and about the provision of the Services to enable the Council to make or require the Organisation to make proper checks. The Council may require such personnel to be removed from the provision of the Services or a specified part thereof.
- 20.5 The Council shall in no circumstances be liable either to the Organisation or to such personnel in respect of any cost, expenses, liability, loss or damage occasioned by any removal effected under Clauses 20.3 and 20.4
- 20.6 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.

21. CONTROL AND SUPERVISION OF THE ORGANISATION'S PERSONNEL

- 21.1 The Organisation shall appoint a senior person as its representative empowered to act on behalf of the Organisation for all purposes connected with the Agreement. Such appointment or any further appointment shall be subject to the approval of the Council. The Organisation's Representative shall not be replaced without the prior written approval of the Council, such approval not to be unreasonably withheld. Any notice, information, instruction or other communication given to the Organisation's Representative shall be deemed to have been given to the Organisation.
- 21.2 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.
- 21.3 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.

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

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

22. USE OF ASSETS

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

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

22.3 All Assets employed by the Organisation in the performance of the Services at any time must be either owned or hired by the Organisation pursuant to a contract of simple hire (and not hire purchase) (the "Hire Contract") the benefit of which contract must be capable of assignment by the Organisation to the Council or to an organisation nominated by the Council for the purpose of carrying out the Services (or any of them) so that the Services may be continued to be provided by a third party in the event of the termination of this Agreement for any reason.

22.4 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 or any organisation nominated by 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 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

22.5 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.

22.6 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

- 22.7 All Assets and materials used by the Organisation shall conform to any applicable British Standard and when so requested the Organisation shall provide the Council with evidence to prove that such Assets and materials so conform
- 22.8 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
- 22.9 The Organisation shall only keep such potentially dangerous or hazardous materials or equipment on the Premises as are necessary for the provision of the Services and are approved by the Council's Representative (such approval not to be unreasonably withheld or delayed) and such materials or equipment shall at all times be kept under proper control and the Organisation shall ensure that all such materials and their usage and storage comply with all applicable laws and shall remove any such materials or equipment from the Premises if the Council so requires
- 22.10 At the expiry of the Term or upon termination of this Agreement (whichever shall first occur) the Council may serve a notice upon the Organisation requiring the Organisation to transfer free of charge to the Council or any other person or persons as may be specified in such notice (a) all Assets and materials used by the Organisation and (b) the benefit of all contracts or agreements relating to the hire of the Assets
- 22.11 Upon receipt of a notice under Clause 22.10 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.
- 22.12 The Organisation shall cause all Assets to bear such devices, insignia or words as the Council may approve and determine.

23. USE OF COUNCIL'S ASSETS

The Council shall with effect from the Commencement Date make available to the Organisation the Council's vehicles, equipment and any other assets listed in the Second Schedule together with any other such assets as may be made available by the Council to the Organisation (hereinafter together called "the Council's Assets") for use in connection with the Services subject to the following provisions:

- 23.1 the Organisation's obligations set out in Clauses 22.2, 22.5, 22.6, 22.7, 22.8 and 22.13 shall apply, mutatis mutandis, to the Council's Assets;
- 23.2 the Organisation will renew or replace any of the Council's Assets whenever necessary so as to ensure compliance with the Organisation's obligations under Clause 22 and all the provisions of Clause 22 shall thereupon apply to such renewals or replacements;

- 23.3 the Organisation shall be responsible for the security of such of the Council's Assets which it is permitted to use under this Clause 23 both when in use and when not in use;
- 23.4 upon the determination of this Agreement howsoever caused the Organisation shall forthwith return to the Council (or as otherwise directed by the Council) free from encumbrances the Council's Assets in good and serviceable repair and condition
- 23.5 in respect of any of the Council's Assets which are leased the Organisation shall comply with the terms and conditions of such leases and at the expiry or earlier determination of such leases return the said Council's Assets to the lessor or otherwise as the Council shall direct.

24. **CONTRACTS TO BE ADMINISTERED**

The Organisation shall act on behalf of the Council in administering the Contracts and shall:-

- 24.1 comply with all reasonable requirements of the Council in respect of any or all of the Contracts
- 24.2 monitor and review the performance of those carrying out the Contracts
- 24.3 take all proper steps (but not including legal action or proceedings unless so required expressly in writing by the Council) to enforce the Contracts
- 24.4 at the request of the Council supply all information including copies of any documents to the Council
- 24.5 liaise with the Council in respect of any renewal or re-letting of any of the Contracts
- 24.6 Provided always that all new contracts entered into by the organisation will:
- 24.6.1 comply with contract procedure rules agreed between the organisation and the council or as revised by agreement between the parties
- 24.6.2 be subject to such collateral warranties in favour of the council as the council shall require for the performance and enforcement of the contracts
- 24.6.3 be subject to provisions for assignment of those contracts to the council in the event of termination of the management agreement

25. **ASSIGNMENT AND SUB-CONTRACTING ETC**

- 25.1 The Organisation shall not:
- 25.1.1 assign the Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof;

25.1.2 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.

25.2 The Organisation shall ensure that any sub-contractor permitted to perform any part of the Services under Clause 25.1.2. shall be fully supplied with all necessary information about this Agreement (including any relevant instructions given by the Council's Representative to the Organisation).

25.3 The Organisation shall not carry out work for or provide services to third parties without the Council's prior written consent.

26. USE OF COMPUTER SYSTEMS AND SOFTWARE

26.1 The Council shall permit the Organisation to use for the purposes of providing the Services the Council's Computer Systems and/or Council's Software as set out in the Fifth Schedule subject to such terms, conditions and stipulations as are set in the Fifth Schedule or as the Council may notify to the Organisation from time to time.

26.2 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

26.3 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

26.4 Without prejudice to Clause 26.9 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.

26.5 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

26.5.1 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;

- 26.5.2 ensure that any computer software it uses is properly licensed;
- 26.5.3 comply with all relevant requirements of any supplier of the Council's Computer systems and/or the Council's Software.
- 26.6 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
 - 26.6.1 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
 - 26.6.2 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 Delivery Plan.
- 26.7 If at any time the Council has reason so to do (including but not limited to actual or threatened interference with or damage to the Council's Computer Systems and/or the Council's Software) the Council shall be entitled to require that the Organisation cease to use the Council's Computer Systems and/or the Council's Software and disconnect or otherwise separate the Organisation's own computer systems and/or software from the Council's Computer Systems and/or Council's Software. The Council will not exercise this right without giving as much notice as practicable (save in cases of urgency) and agreeing to an appropriate variation to the Delivery Plan in accordance with Clause 64.3 to reflect the cost of providing its own computer systems and software.
- 26.8 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.
- 26.9 The Organisation shall comply with any technical standards relating to the use of information technology 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.
- 26.10 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.

27. DATA

- 27.1 Subject to the provisions of Clauses 26 and 28 the Organisation shall be entitled to access such data and information as is stored on the Council's Computer Systems as set out in the Eighth Schedule which the Organisation may require in order to provide the Services.
- 27.2 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.
- 27.3 Without prejudice to Clauses 26.4 and 26.9 and subject to Clause 28 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
- 27.4 The Organisation shall at all times ensure that where (following consent under Clause 26.5) the Organisation is using the Organisation's own computer systems:-
- 27.4.1 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
- 27.4.2 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

28. DATA PROTECTION

- 28.1 Without prejudice to Clause 27 and subject to Clause 26.9 the Organisation shall:-
- 28.1.1 comply with its obligations under the Data Protection Acts 1984 and 1998 (including where appropriate obtaining registration thereunder) and the Computer Misuse Act 1990 insofar as the performance of the Services and the other requirements of this Contract give rise to obligations under that Act
- 28.1.2 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 28.1.1

28.1.3 provide the Council with all such assistance as the Council may require to enable the Council to comply with its obligations under the Access to Personal Files (Housing) Regulations 1989

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

28.2 Neither party shall knowingly do anything which places the other in breach of its obligations under the Data Protection Acts 1984 and 1998.

29. **CONFIDENTIALITY**

The Organisation shall not and shall ensure that its employees agents and subcontractors shall not divulge or dispose of or part with possession custody or control of any material or information provided to the Organisation by the Council pursuant to the Agreement or prepared or obtained by the Organisation pursuant to the Agreement other than in accordance with the express written instructions of the Council's Representative.

30. **HEALTH AND SAFETY**

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.

31. **INSURANCES**

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

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 £5,000,000 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 an unlimited sum in respect of personal injury to or the death of any person under a contract of service with the Organisation and arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1988 and any statutory orders made thereunder.
- 31.6 The Organisation shall maintain all other insurances as may be necessary or prudent for the performance of the Agreement.
- 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 deduct the cost of so doing from the rent Fee;
- 31.10.2 commence termination or other action in accordance with Clause 66.
- 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 INSPECTION

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

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 Council's Monitoring Officer or Borough Treasurer or its Standards Committee or the Standards Board or 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 with that request as soon as possible.

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 meetings to be arranged from the Commencement Date and the Organisation shall provide information to the Council in advance of such meetings in a format to be agreed between the Organisation's Representative and the Council's Representative:-

33.3.1 at least once a month to discuss operational issues

33.3.2 at least once a month to discuss:

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

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 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.

- 33.5 The Organisation shall inform the Council's Representative immediately by telephone or email (and shall confirm in writing as soon as practicable following such call or email) of any or all of the following matters:-
- 33.5.1 any failure by the Council or its employees or agents or other persons providing services to the Council to meet obligations under this Agreement.
- 33.5.2 any acts or omissions by the Council or such other persons as are referred to in Clause 33.5.1 which prevent or hinder or are likely to prevent or hinder the Organisation from complying with its obligations under this Agreement.
- 33.5.3 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.
- 33.6 The Organisation shall co-operate with all Council departments to enable them the better to perform their functions and duties either by means of the provision of information or by such other appropriate means as do not involve out-of-pocket expenditure
- 33.7 The Organisation and the Council shall establish such mutual arrangements as may be necessary (whether by pager, mobile telephones, email or otherwise) to ensure that the liaison arrangements stipulated in this Agreement can be achieved.
- 33.8 The Organisation shall liaise with Council Members, Members of Parliament and other elected representatives in such a manner as shall be reasonably required from time to time by the Council's Representative.
- 33.9 The Organisation shall also provide the information referred to in this Clause 33.3 to the Council's Housing Overview and Scrutiny Committee every three months.

34. FRAUD

- 34.1 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.
- 34.2 On receiving notification under Clause 34.1 and without prejudice to the Organisation's legal liability and financial responsibility the Council's Representative shall assume and be given sole responsibility for investigating or arranging for the investigation of such fraudulent action or malpractice.
- 34.3 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 34.1 or as a result of the Council's Representative's own information.

34.4 The Council's Representative shall have the right (without prejudice to Clause 34.3) to require that the Organisation suspend from any further work on this Agreement any person suspected of fraudulent action or malpractice.

34.5 Without prejudice to any other rights the Council may have (including but not limited to termination under Clause 66) 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.

35. COMPLAINTS

35.1 The Organisation shall at the request of the Council's Representative, in the places and in a form approved by the Council's Representative, arrange for notices to be permanently displayed giving information as to how complaints about the provision of the Services may be made. The Organisation shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner.

35.2 The Organisation shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Council's Representative at all reasonable times. The Organisation shall notify the Council's Representative forthwith in writing of all formal complaints received and of all steps taken in response thereto.

35.3 The Organisation shall adopt and comply with its own complaints procedure which shall be consistent with the Council's procedure and which shall provide for a similar escalation procedure under which 'Stage 3' complaints will be referred to the Chief Executive Officer of the Organisation for investigation. The Council shall report the result of its investigation to the Organisation with a recommendation which the Organisation need not accept.

35.4 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

35.5 The Organisation acknowledges that for the purposes of this Clause 35 the term "complaints" includes (without limitation) suggestions from a member of the public or an elected representative as to how the Services might or should be performed as well as personal or particular concerns about tenancies or Dwellings.

36. LEGAL INVESTIGATIONS

36.1 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

36.2 If requested to do so by the Council's Representative, the Organisation shall provide the Council's Representative with any relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved or any inquiry of the Council's Housing Overview and Scrutiny Committee or any relevant disciplinary hearing internal to the Council and through the appropriate officers or employees shall give evidence in such inquiries or proceedings or hearings

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

37. AGENCY

37.1 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.

37.2 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.

37.3 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.

38. SECURITY

38.1 The Organisation shall maintain and shall ensure that its personnel and all its visitors maintain the security of such of the Council's Premises which it is licensed or permitted to use under Clause 42 both when in use and when not in use.

38.2 The Organisation shall ensure that access to the Council's Premises which it is permitted to use under Clause 42 is restricted to its personnel and visitors engaged upon or in connection with the provision of the Services.

38.3 The Organisation shall comply with the Council's security regulations including any made for the purpose of the Data Protection Acts 1984 and 1998.

38.4 The Organisation shall provide to any of its personnel, who shall at any time have access to any relevant Council Premises, security passes in such form as the Council may from time to time determine and issue to the Organisation.

38.5 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

39. 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.

40. PROVISION OF INFORMATION

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

41. ASSIGNMENT

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

42. USE OF PREMISES

42.1 The Council shall make available to the Organisation the Premises detailed:

42.2 In Part I of the Third Schedule on a licence to share the use of the premises only for purposes in connection with the management agreement subject to costs of occupation being apportioned on the basis of the proportionate floor area occupied AND at the council's request and on reasonable notice the Organisation will vacate such premises and be required to occupy alternate accommodation in Barnet House or elsewhere.

42.3 In Part 2 of the schedule on the basis of tenancies at will pending negotiation of full lease terms. On conclusion of the negotiations the Organisation will enter into leases with the council excluded from Part II of the Landlord and Tenant Act 1954.

42.4 On the date hereof the Council shall grant and the Organisation shall take the Licence(s) so as to take effect on the Commencement Date.

43. HOUSING INSPECTION

The Council shall afford the Organisation all reasonable assistance in order to enable the Organisation to comply with its obligations under Clause 32.

44. AUDITS

44.1 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:-

44.1.1 immediate access to;

44.1.2 permission to copy and remove any copies of; and

44.1.3 permission to remove the originals of

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

44.2 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 after the termination or expiry of this Agreement.

45. SERVICES SUPPLIED BY COUNCIL

The Council shall supply the services described in the Ninth Schedule on the terms set out therein as contained in a service level agreement between the Council and the Organisation

46. INTELLECTUAL PROPERTY RIGHTS

46.1 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.

46.2 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.

47. RIGHT TO USE DOCUMENTS

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

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

48. **RIGHT TO USE PREMISES**

- 48.1 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.
- 48.2 Without prejudice to the provisions of Clause 48.1 the Organisation shall upon the occurrence of a civil emergency and at the request of the Council use its best endeavours to provide the following services under the control and direction of the Council's Emergency Officer or his designated representative:-
- 48.2.1 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
- 48.2.2 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
- 48.2.3 to co-ordinate and supervise the operation of the provision of temporary accommodation described in Clause 48.2.1
- 48.2.4 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
- 48.2.5 whenever so requested by the Council to arrange for the provision of temporary accommodation for homeless persons and/or evacuees
- 48.2.6 to manage the temporary accommodation secured pursuant to these provisions for so long as the emergency lasts
- 48.2.7 to produce monthly accounts to the Council itemising its reasonable costs incurred in the provision of the services detailed in Clauses 48.2.1-6 such costs to be agreed between the parties (and thereupon treated as a variation of the Delivery Plan) and in default of such agreement the matter shall be referred to an Expert pursuant to the provisions of Clause 68.
- 48.3 At the request of the Council the Organisation will attend such training sessions and/or exercises as may be specified by the Council and the number of the Organisation's

employees who shall be required so to attend shall be agreed between the Council and the Organisation and in default of agreement the Council shall specify the number of the Organisation's employees to attend.

49. **EXCLUSION OF LIABILITY**

49.1 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.

49.2 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.

50. **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.

51. **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

52. **FINANCIAL ARRANGEMENTS**

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

53. **RECOVERY OF RENT AND PAYMENT OF FEE**

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 whenever requested access thereto and copies thereof. The Fee for the provision of this part of the Services shall be determined as set out in the Delivery Plan.

54. **RIGHT TO USE SURPLUSES**

If the Organisation out-performs the Delivery Plan and if as a consequence the Council would benefit from sums for which it had not budgeted and the Council did not require the same to meet any obligations or commitments (whether to third parties or otherwise) which are the subject of Council resolutions or incorporated in Council budgets then to the extent permitted by and subject to any conditions set out in the Delivery Plan the Organisation shall be entitled to use such sums in accordance with any scheme for surpluses forming part of the Delivery Plan (including but not limited to any scheme to develop service provision for residents) or such other scheme for surpluses as may be agreed between the Chief Executive of the Organisation and the Head of Housing of the Council (or their nominated representatives).

55. **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-one (21) days next after becoming payable a further and additional sum by way of interest on the same calculated on a day-to-day basis at an annual rate higher by two (2) per cent than the Cooperative Bank plc Base Rate in force from time to time from the date upon which such sum first became payable shall (if demanded) be accounted for (as if paid by) the defaulting party to the other party.

56. **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 shall be added to the amount thereof and paid in addition thereto upon production of a proper Value Added Tax invoice.

PART I – EMPLOYMENT AND STAFFING

57. **EMPLOYEES**

- 57.1 Details relating to existing Transferring Employees are set out in Part I of the Fourth Schedule. These details are believed to be correct at the date hereof but the Council does not give any guarantees or warranties in this respect. The Council will provide

details of any material changes which occur to the information contained in Part I of the Fourth Schedule prior to the Commencement Date and to provide to the Organisation upon written request such further factual (but not personal) information relating to the Transferring Employees reasonably required by the Organisation.

- 57.2 The Council shall endeavour to retain the services of each of the Transferring Employees to the intent that their respective contracts of employment shall be continued to the Commencement Date and then be transferred to the Organisation by virtue of the Regulations.
- 57.3 Without prejudice to Clause 57.6 the Council shall be responsible for all salaries and other emoluments including but without limitation holiday pay, tax and National Insurance payments allowances and contributions to retirement benefit schemes in respect of the Transferring Employees up to but not including the Commencement Date and all requisite appointments shall be made.
- 57.4 The Organisation is a body set up by a local authority, in exercise of powers under section 2 of the Local Government Act 2000 as a housing management company to exercise functions as agent of the local authority under an arrangement approved by the Secretary of State under section 27 of the Housing Act 1955 and as such is a Scheme Employer for the purposes of Schedule 2 to the Local Government Pension Scheme Regulations 1997.
- 57.5 The Organisation shall ensure either (a) that all Transferring Employees are offered membership of the pension scheme of which they were members prior to the Commencement Date or are offered broadly comparable terms and conditions as to pension and death in service benefits (as certified by the Council's actuary) 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.
- 57.6 The Council shall indemnify and hold harmless the Organisation against each and every cost, claim, liability, expense or demand arising out of:
- 57.6.1 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;
- 57.6.2 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
- 57.6.3 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.

- 57.7 The Organisation shall indemnify and hold harmless the Council against each and every cost, claim, liability, expense or demand arising out of:-
- 57.7.1 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;
- 57.7.2 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;
- 57.7.3 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;
- 57.7.4 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.
- 57.8 The Council has for the benefit of certain of the Transferring Employees entered into contract hire and maintenance agreements for certain vehicles as set out in Part II of the Fourth Schedule and has entered into agreements with the Transferring Employees there identified in relation to the use thereof. The Council shall endeavour to assign or procure the assignment of and the Organisation shall take any contract hire and maintenance agreement for all such vehicles with effect from the Commencement Date PROVIDED THAT:
- 57.8.1 in any case where the Council is unable to assign such agreements or procure new agreements on behalf of the Organisation and until the completion of such assignments or new agreements the Council shall (a) hold the relevant contracts on trust for the Organisation and (b) join with the Organisation in any proceedings reasonably brought by the Organisation to enforce such contracts
- 57.8.2 the Organisation shall within twenty (21) Working Days of receiving any certificate from the Council that any sum or sums may be payable following the Commencement Date pay such sum or sums as the Council shall direct
- 57.8.3 the Organisation shall pay to the Council (or account for)¹ an amount or amounts equal to that proportion of any rental and insurance payments previously made by the Council under the said vehicle agreements which relates to the period on or after the

¹ Here and elsewhere "account for" reflects the fact that an adjustment to the Organisation's accounts/Delivery Plan may be more appropriate than actual payment.

Commencement Date as soon as practicable following notification of such amount or amounts by the Council

- 57.9 The Council has entered into agreements for Car Loans with certain of the staff mentioned in Part I of the Fourth Schedule ("the Borrowers") whereby the Council has lent to each Borrower the sums set out in Part III of that Schedule. The Council will on the Commencement Date assign the right to receive payment of all monies due under the Car Loans to the Organisation and the Organisation shall as soon as practical following the Commencement Date pay to the Council (or account for) the total of sums outstanding as shown in Part III of the Fourth Schedule including the specified interest thereon.
- 57.10 The Organisation shall:-
- 57.10.1 prior to the Commencement Date establish such staffing arrangements as may be appropriate to ensure the due and proper performance of the Services.
- 57.10.2 provide details of the said staffing arrangements to the Council's Representative.
- 57.11 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).¹
- 57.12 The Organisation shall notify the Council's Representative in writing of any amendments in the said staffing structure during the Term whether or not they fall within the provisions of Clause 57.10.
- 57.13 If so requested by the Council's Representative, the Organisation shall prior to the Commencement Date provide to the Council such information as is required to enable the Council to comply with its obligations under Regulation 10 of the Regulations including but without limitation details of (a) the legal, economic and social implications of the transfer of the Undertaking for the Transferring Employees and other affected employees, (b) the measures which the Organisation envisages will be taken in connection with these Transferring Employees and (c) the reasons for such measures
- 57.14 During the six months preceding the expiry of this Agreement or where notice to terminate this Agreement for whatever reason has been given, the Organisation shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:-
- 57.14.1 Vary or purport or promise to vary the terms and conditions of employment of any Relevant Employee;

¹ This may appear constraining but if and when the Agreement ends the Council will be visited (financially or operationally) with the TUPE consequences.

- 57.14.2 Employ or offer or promise employment to any person;
- 57.14.3 Increase the number of Relevant Employees;
- 57.14.4 Assign or redeploy any Relevant Employee to other duties.

58. 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 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 and any claims or actions brought by such employees or potential claims or actions whether or not as to their employment with the Organisation so as to enable the Council and any third party to assess the implications (if any) of the Regulations.

59. 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).

PART J – MONITORING AND MANAGEMENT

60. 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.

61. COUNCIL'S REPRESENTATIVE

61.1 The Council's Representative shall be the Head of Housing or such other 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.

61.2 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 64 it shall be subject to the terms thereof.

61.3 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**62. TENANT MANAGEMENT ORGANISATIONS**

62.1 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.

62.2 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:-

62.2.1 provision of information and records about the Services

62.2.2 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

62.2.3 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

62.3 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 62.1 the Council may issue further instructions to the Organisation requiring the Organisation to make arrangements to transfer responsibility for the Services and the Dwellings so affected to the Tenant Management Organisation in such manner and within such timescale as the Council may prescribe and the Organisation shall comply with such instructions which may include (but not be limited to):-

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

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

62.3.3 transferring necessary equipment and materials as may reasonably be stipulated by the Council's Representative

62.3.4 establishing working arrangements with the Tenant Management Organisation

62.3.5 providing any other assistance reasonably needed to enable such transfer to take place.

62.4 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 65 (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 65.3 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 66.4 shall apply)

- 62.5 In the event that a Tenant Management Organisation to which responsibility for managing the Services has been transferred in accordance with this Clause 62 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 64 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 64.3.
- 62.6 The provisions of this Clause 62 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.
- 62.7 The Organisation shall in complying with its obligations under this Clause 62 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

63. DURATION AND RENEWAL

- 63.1 Subject to Clause 63.3, this Agreement shall expire on the day prior to the tenth anniversary of the Commencement Date unless terminated by the Council pursuant to Clause 63.2 and subject to earlier termination as provided herein.
- 63.2 The Council shall be entitled to terminate the Term on the fifth anniversary of the Commencement Date by giving notice to this effect to the Organisation no later than six calendar months before the fifth anniversary of the Commencement Date.
- 63.3 The parties shall have the right to agree in their absolute discretion to extend the Agreement for any further period or periods subject to obtaining the approval of the Secretary of State under Section 27 of the Housing Act 1985.

PART M – VARIATIONS ETC

64. VARIATIONS

- 64.1 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.

- 64.2 Reasonable notice for the purpose of Clause 63.1 shall be deemed to be either:-
- 64.2.1 three months' notice for changes which the Council has determined will require consultation under Section 105 of the Housing Act 1985 or which it reasonably considers will result in more or fewer staff being required by the Organisation or significantly more cost being incurred by the Organisation; or
 - 64.2.2 one month's notice in any other case.
- 64.3 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.¹
- 64.4 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:-
- 64.4.1 identify the relevant employee or employees;
 - 64.4.2 quantify and substantiate the costs which the Organisation is likely to incur by reason of the said redundancy or redundancies; and
 - 64.4.3 notify the Council of the same
- and on receipt of such notification the Council shall, having consulted (where necessary) with the Organisation, either:-
- 64.4.4 take account of the potential redundancy costs to be incurred by the Organisation as a result of the Variation in determining the variation to the Fee; or (if the Council so determines)
 - 64.4.5 meet the amount of the statutory redundancy entitlement of the relevant employee or employees

PROVIDED THAT the Organisation shall have used its best endeavours to limit redundancy costs and the Council shall not be obliged to agree to pay any amount which exceeds 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.

¹ This is a key provision, reflecting the use of the Delivery Plan as the "driver" of the Contract.

64.5 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 64.4.

64.6 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.

65. ALTERATIONS

65.1 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 62) a variation shall be made to the Delivery Plan pursuant to Clause 64.3 and such variation shall take account of any increase or reduction in the Organisation's responsibilities and any likely increase or reduction in cost to the Organisation resulting from such Alteration.

65.2 A "substantial change" for the purposes of Clause 65.1 shall mean any increase or decrease of 500 or more in the number of Dwellings either:-

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

65.2.2 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.

65.3 The Organisation shall provide to the Council such information as the Council may require for the purposes of Clause 65.1.

65.4 It is hereby agreed that no Variation shall be made pursuant to Clause 64.3 as a result of an Alteration if there is a compensating reduction or reorganisation of any part of the Services.

65.5 If the Organisation disputes a Variation pursuant to Clause 64.3 arising from an Alteration it shall be entitled to refer the matter for determination by an Expert under Clause 68.

66. TERMINATION ETC.

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

66.1.1 commits a breach of any of the Organisation's obligations under the Agreement;

66.1.2 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;

- 66.1.3 has any director or senior manager of it convicted of dishonesty;
 - 66.1.4 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;
 - 66.1.5 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver;
 - 66.1.6 has a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
 - 66.1.7 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
 - 66.1.8 has an administrator or an administrative receiver (as defined in the Insolvency Act 1986) appointed;
 - 66.1.9 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;
 - 66.1.10 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 66.3.
- 66.2 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 66.3.
 - 66.3 In the event of any one or more of the circumstances described in Clauses 66.1 and 66.2 the Council may take any or all of the following actions:-
 - 66.3.1 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
 - 66.3.2 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
 - 66.3.3 determine the whole of this Agreement

and in the event of action pursuant to Clauses 66.3.1 and 66.3.2 a corresponding variation to the Delivery Plan shall be made in accordance with Clause 64.3.

- 66.4 If the Agreement is terminated in whole or in part as provided in Clauses 66.3 the Council shall:
- 66.4.1 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;
- 66.4.2 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
- 66.5 If at any time during the Term the Council shall determine that the Services or any 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 65 and any other right or remedy available to it) to take (if it so wishes) any or all of the following actions:-
- 66.5.1 serve notice on the Organisation to rectify the defect (where or when it is capable of rectification) within such time as the Council may direct;
- 66.5.2 carry out the relevant Services itself or by a third party and vary the Delivery Plan in accordance with Clause 64.3 to reflect the Council's loss, cost and expense in so doing
- 66.6 If the Council exercises its rights under this Clause 65 to terminate the whole or any part of the Agreement then in relation to the whole or any such part:-
- 66.6.1 the Organisation shall, unless the Council requests otherwise, forthwith cease to perform any of the Services
- 66.6.2 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 53
- 66.6.3 hand over this Agreement to the Council without detriment to the interest of the Council's tenants or other customers of the Council.
- 66.7 The Council undertakes to exercise its power to appoint and remove board members pursuant to the Articles of Association of the Organisation only in any of the circumstances described in Clauses 66.1 and 66.2 and then only for so long as (in the Council's reasonable opinion) the relevant circumstances subsist.

67. VARIATION OF CONTRACT

No deletion from, addition to, or variation of this Agreement shall be valid or of any effect unless agreed in writing and signed by the parties

68. DISPUTE RESOLUTION

- 68.1 All disputes between the Organisation and the Council arising out of or in connection with this Agreement or the performance of the Services by the Organisation or any failure by the parties to agree any matter to be agreed as referred to in this Agreement within a reasonable period shall be referred to an expert to be agreed upon by the parties or in default of such agreement to be nominated by the President for the time being of the Chartered Institute of Housing or a person appointed by him.
- 68.2 The Expert appointed under Clause 68.1 shall be entitled to make such decision or award as he thinks just and equitable having regard to all the circumstances then existing and the costs of such Expert shall follow the event or in the case of neither party succeeding such cost shall be apportioned between the parties by the Expert in such proportions as he in his absolute discretion thinks fit.
- 68.3 Any award of costs under Clause 68.2 shall be reflected in a variation to the current Delivery Plan.
- 68.4 Any award or decision of the Expert under this Clause shall be final and binding on both parties save in the event of fraud or a mistake in law or material fact.
- 68.5 Until such time as a dispute between the Organisation and the Council is resolved the Organisation shall continue to perform the Services in accordance with this Agreement.

PART N – NOTICES AND OTHER MATTERS

69. NOTICES

- 69.1 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.
- 69.2 Notices served under Clause 69.1 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.

70. 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.

71. 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.

72. SURVIVAL OF THIS CONTRACT

72.1 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.

72.2 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.

73. LAW

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

74. 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.

75. 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.

76. RIGHTS OF THIRD PARTIES

It is hereby agreed by the Parties that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and accordingly the Parties agree that nothing is

intended to confer on any third party any rights in respect of this Agreement by virtue of that Act.

77. NOMINATION RIGHTS AND AGREEMENTS

The Organisation shall afford the Council all appropriate assistance and co-operation to enable the Council to achieve consistency and fairness in the Council's allocations and nominations policies and procedures throughout the Council's administrative area.

78. VARIATIONS TO TENANCY CONDITIONS

The Organisation shall implement any variations to the Council's tenancy terms and conditions required by the Council and help the Council to comply with any requirements of the Housing Act 1985 in respect of such variations.

79. INFORMATION IN TENANTS' HANDBOOK

The Organisation shall assist the Council in providing existing tenants with information about Council tenancies or other aspects of the Council's housing functions throughout the Council's administrative area whether through the tenants handbook or otherwise.

80. INFORMATION FOR PROSPECTIVE TENANTS

The Organisation shall afford prospective Council tenants with such information about tenancies within the Organisation's operational area and elsewhere within the Council's administrative area as may be appropriate or as the Council may reasonably stipulate.

81. TRANSFERS AND MUTUAL EXCHANGES

The Organisation shall adopt such policies and procedures in respect of transfers and mutual exchanges as shall facilitate movement within the Council's administrative area on such terms as the Organisation reasonably determines to be appropriate or otherwise as the Council reasonably stipulates.

82. CONSULTATION WITH OTHER HOUSING SERVICE PROVIDERS

The Organisation shall consult with other housing service providers within the Council's administrative area so as to achieve so far as practicable such goals of fair and consistent treatment for existing and prospective tenants as the Council shall determine.

83. COMPARISON EXERCISES WITH OTHER HOUSING SERVICE PROVIDERS

The Organisation shall participate in such benchmarking and other companion exercises with other housing service providers within the Council's administrative area as the Council shall reasonably require.

PART P – TERMS USED ETC

84. DEFINITIONS AND INTERPRETATION

84.1 The definitions are as follows:

“Agreement”

means this Agreement (including the Schedules and Annexes) and any variations in accordance with Clause 64.

“Annual Performance Plan”

means the performance plan forming part of the Delivery Plan which is to be produced annually by the Organisation and which is described in Clause 8.

“Annual Sections of the Delivery Plan”

means those sections of the Delivery Plan which in accordance with Clause 7 are prepared on an annual basis

“Best Value”

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

“Best Value Review”

means the review of the Services provided by the Organisation to be produced by the Organisation and which is described in Clause 9

“Car Loans”

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

“Commencement Date”

means 1 April 2004

“Contract Standard”

means the standard to which the Services are to be provided as defined in Clause 17.

“Contracts”

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

“Council Guidelines”

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

“Council’s 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 Equipment and Vehicles”

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

“Council’s Representative”

means the person nominated pursuant to Clause 61.

“Council’s Software”

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

“Delivery Plan”

means the document so entitled which describes the outputs to be achieved by means of the Services to be provided by the Organisation and any variations of such document made pursuant to Clause 64.

“Delivery Plan Format”

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

“Delivery Plan Strategy”

means in respect of the period up to (but not including) the first anniversary of the Commencement Date the initial Delivery Plan forming Annex 1 and in respect of subsequent years of the Agreement means the Delivery Plan strategy to be submitted by the Organisation pursuant to Clause 7.

“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 Third Schedule shall be excluded), (b) any land, gardens, outhouses, private paths or driveways usually enjoyed with any such dwelling house and (c) group homes for sheltered accommodation provided under the Enabling Acts together with any land, gardens or driveways usually enjoyed with any such sheltered accommodation.

“Enabling Acts”

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

“Expert”

means an individual appointed in accordance with Clause 68.

“Fee”

means the fee received by the Organisation from the Council as set out in the Delivery Plan

“Guidance”

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

“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.

“Licence(s)”

means the licence(s) to be granted pursuant to Clause 42 in substantially the form(s) set out in the Seventh Schedule

“Organisation’s Representative”

means the person who is to represent the Organisation appointed pursuant to Clause 21.

“Premises”

means the offices and other premises described in the Third Schedule and comprised in the form of Licence set out in the Seventh Schedule

“Regulations”

means the Transfer of Undertakings (Protection of Employment) Regulations 1981 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 Employee”

means an employee of the Organisation including a Transferring Employee.

“RPI”

means the United Kingdom General Index of Retail Prices (All Items) or in the event that the basis of calculation of such Index shall change or if such Index ceases to be published (as to which the Council’s reasonable decision shall be conclusive) such other published index of retail prices or the value of money as the Council and the Organisation may agree PROVIDED THAT in the event that such agreement cannot be reached within twenty-one (21) Working Days of a decision by the Council the RPI shall be determined by an Expert in accordance with the provisions of Clause 68.

“Services”

means the services to be provided by the Organisation in accordance with the Agreement and includes any variations thereto made pursuant to Clause 64.

"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 Management Organisation"

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

"Term"

means the period beginning on the Commencement Date and expiring ten years less one day from the Commencement Date unless (a) terminated sooner in accordance with Clause 63.2 or Clause 66 or otherwise as herein provided or in accordance with common law or statute or (b) extended in accordance with Clause 63.3.

"Transferring Employees"

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

"Undertaking"

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

"Vehicle Lease"

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

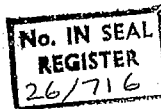
"Working Day"

means any day between the hours of 8.45am 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.

- 84.2 Reference to the Organisation's personnel shall be deemed to include the Organisation's directors and employees and the Organisation's agents, sub-contractors

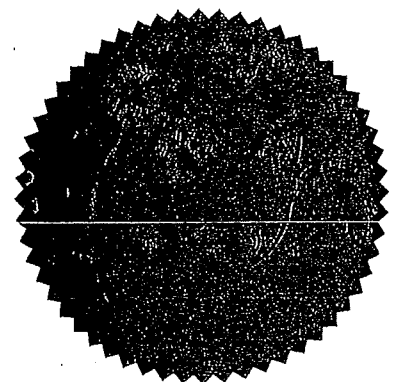
- 84.5 Words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include firms and corporations
- 84.6 References to Clauses, Schedules and Annexes shall be deemed to be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

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



THE COMMON SEAL of THE)
MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF BARNET)

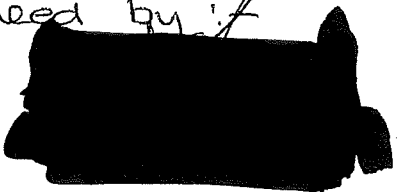
was hereunto affixed
in the presence of:-



~~THE COMMON SEAL of BARNET)
HOMES LIMITED was hereunto affixed)
in the presence of:-)~~

~~Mayor and
Borough Solicitor and
Assistant Chief Executive~~

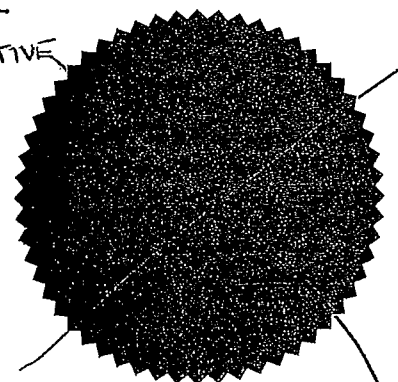
Signed and delivered as a
deed by:-



DIRECTOR



DIRECTOR



and essential visitors (as referred to in Clause 38.2) unless the context otherwise requires.

84.3 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.

84.4 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.

[REDACTED]

[REDACTED]

[REDACTED]

The First Schedule

Contracts To Be Administered

See attached schedule

The Second Schedule

Council's Assets

BARNET HOMES EQUIPMENT INVENTORY SUMMARY 2004

| ITEM | MODEL | QUANTITY |
|-----------------------------------|-------------------|-----------|
| PC | COMPAQ | 236 |
| PRINTER | HEWLWTT PACKARD | 74 |
| NETWORKED PRINTER | COMPAQ | 1 |
| GENERATOR UPS | CONPAQ | 1 |
| SERVER MONITOR | | 1 |
| SAFFRON PRINTER | | 1 |
| SCANNER | HP SCANJET | 6 |
| FAX | VARIOUS | 38 |
| FRANKING MACHINE | NEOPOST | 5 |
| PHOTOCOPIER | SHARP | 7(LEASED) |
| LAPTOP | TOSHIBA | 5 |
| PALM COMPUTERS | VARIOUS | 12 |
| DIGITAL CAMERA | VARIOUS | 18 |
| MANUAL CAMERA | POLAROID | 1 |
| TV/VIDEO | VARIOUS | 7 |
| OVERHEAD PROJECTOR | VARIOUS | 3 |
| MANUAL | | |
| OVERHEAD PROJECTOR | VARIOUS | 2 |
| POWER POINT | | |
| FILING SYSTEM | KARDEX LEKTREIVER | 6 |
| FILING SYSTEM | KARDEX TIMES TWO | 15 |
| SHREDDER | VARIOUS | 4 |
| BINDER | REXEL | 1 |
| LAMINATOR | | 34 |
| ASCOM MAILER | | 1 |
| STORACALL HARD DRIVE | | 1 |
| CO ANALISER | KANE & MAY | 2 |
| MICROWAVE | VARIOUS | 8 |
| FRIDGE FRIDGE/FREEZER | VARIOUS | 23 |
| DISHWASHER | SERVIS | 1 |
| WASHING MACHINE | VARIOUS | 18 |
| TUMBLE DRYER | VARIOUS | 14 |
| BABY BELLING COOKER | | 7 |
| VCR | | 1 |
| CCTV MONITOR | | 1 |
| RACAL VOICE RECORDER | | 1 |
| INTERCOM HANDSET | | 1 |
| CISCO IOS UNIT | | 1 |
| HORIZON ALARM UNIT AND PENDANT | | 1 |

| ITEM | MODEL | QUANTITY |
|-------------------------|-----------|----------|
| STERO/MUSIC CENTRE | VARIOUS | 8 |
| PIANO | | 6 |
| SECURITY ALARM UNIT | | 1 |
| BLOWERS | | 5 |
| BILLY GOATS | | 5 |
| BILLY KIDS | | 1 |
| SCRUBBING MACHINE | | 5 |
| GRITTING MACHINE | | 3 |
| STRIMMER | | 4 |
| JETWASHER | | 4 |
| TRAILER | | 3 |
| AIRBROOMS | | 22 |
| ROTARY FLOOR CLEANER | | 6 |
| WET & DRY VAC | | 4 |
| PLATFORM BARROWS | | 21 |
| EUROMEC SWEEPER | | 1 |
| GENERATOR | | 1 |
| HEDGE TRIMMER | | 1 |
| SALT MACHINES | | 6 |
| GREEN MACHINES | | 2 |
| LEAF BLOWERS | | 6 |
| PETROL HEDGE CUTTER | STIHL | 1 |
| PRESSURE WASHER | STIHL | 1 |
| LEAF VACUM | | 1 |
| NUMATIC SCRUBBER/DRYERS | | 2 |
| VICTOR WET/DRY VACUM | | 2 |
| EXTENDED BUSH LOPPER | | 1 |
| CORDLESS HAMMER DRILL | | 1 |
| TOOL KITS | | 6 |
| MOBILE/RADIOS | DOLPHIN | 20 |
| HYDROLIC | STANLEY | 1 |
| BREAKER | BOSCH | 1 |
| PITCH PUMP | HONDA | 1 |
| PETROL MIXERS | | 2 |
| HILTI DRILL | TEI | 1 |
| ROUTER 110v | | 1 |
| CHOP SAW | | 1 |
| CAT DETECTOR | | 2 |
| PETROL SKILL SAW | | 1 |
| BATTERY HILTI DRILLS | | 3 |
| HILTI DRILL | 110v TE35 | 1 |
| BOSCH PLANERS | | 4 |
| CORDLESS DRILL | MAKITA | 1 |

| ITEM | MODEL | QUANTITY |
|------------------|-------|----------|
| RECIROCATING SAW | | 1 |

| | | |
|----------------------------|-------|---|
| JIGSAW | BOSCH | 3 |
| SKILL SAWS | BOSCH | 3 |
| MITRE SAW | BOSCH | 1 |
| KEY CUTTING MACHINES | | 2 |
| GENERATORS | HONDA | 2 |
| HIMIDIFIERS | | 2 |
| FREEZER KIT | | 1 |
| 4 WAY FOLD LADDER | | 1 |
| VAN RACKINGS | | 2 |
| 6FT WORK BENCH WITH CLAMP | | 1 |
| 10FT WORK BENCH WITH CLAMP | | 1 |
| 5M DOUBLE EXT LADDER | | 1 |
| 2.2M TREBLE EXT LADDER | | 1 |

VEHICLES

DIRECT OPERATIONS TEAM CARETAKING SERVICES

| VEHICLE | QUANTITY | COMMENTS |
|---------|----------|----------|
| COURIER | 38 | LEASED |
| TRANSIT | 22 | LEASED |
| LORRY | 4 | LEASED |

The Third Schedule

Premises and other Property Information

Premises

Other comments

Part 1

Barnet House

First and second floor annex
and whole of third floor.

Part 2

Mill Hill Depot

Building 9 and shared
amenities

Grahame Park Housing Office

All

Merlin Caretaking Plus Base

All

West Hendon Office

Part of only

Stag House Housing Office

All

St John's Close

All

Sub premises

Spur Road Caretaking Lock up

Complete

Hollies Laundry Room (caretaking)

Complete

Baring Court (Financial files only)

Complete

The Fourth Schedule

Transferring Employees ETC

Part 1 – Transferring Employees Etc

Strictly Private & Confidential

See attached schedules

The Fourth Schedule

Car Leases

Part 2

None

The Fifth Schedule

Computer Systems and Software currently used by the council

Saffron
ICL Rents
Microsoft Office 97 and 2000
Microsoft Office Professional 97 and 2000
Microsoft Windows 95 and 2000
Microsoft Windows XP
Microsoft Outlook
OMFAX (SAFFAX)
Debtors
Swift
HBIS
Creditors
Columbus
Homeless Persons Database
HOGs 800 Database
HOG's Cash Incentives Database
HOG's Major Works Database (still being developed by IS)
Court officer Data Base
Customer Contacts Database
Write-offs
Nuisance and Harassment Database
Novell Netware 3.12
Arcserve 6
Norton Antivirus 7
Symantec Antivirus 8.
Acrobat Reader,
Winzip
Project 98 and 2000
Anite At Work
Conductor VME
Maintenance Program Database
Repairs Satisfaction DB
Work Schedule DB
Bonus Database
Backup Exec
HM Call centre DB
Performance DB (for saffron)
SQL Server 7.0 and 2000
MVM System (Gas Team)
Camedia (Digital Camera Software)
Nero (CD writing)
Health and Safety Databases

The Sixth Schedule

Barnet Homes – Financial Arrangements¹

The transfer of monies to the organisation

1. On the first day of each calendar month the Council will make payment in advance to Barnet Homes by bank transfer the management fee due for that month.
2. By 1 April 2004 Barnet Council will advance the sum of £500,000 to Barnet Homes as a cash float.
3. For the capital programme Barnet Homes will provide the Council by the first day of the preceding month with a schedule of the estimated payments to be made in the month. The Council will make payment to Barnet Homes by bank transfer on the first day of the month.
4. On the first day of the second following month Barnet Homes will provide Barnet Council with a reconciliation statement detailing actual capital payments made in the period against those on the schedule of estimated payments. Where there is a difference between the two the next monthly payment shall be amended accordingly.
5. For ease of reference the timetable is set out below:-

| Date | Barnet Homes | Barnet Council |
|---------------|---|---|
| 1 March 2004 | Provide schedule of estimated capital payments for April 2004 | |
| 1 April 2004 | Provide schedule of estimated capital payments for May 2004 | Pay Barnet Homes for estimated April 2004 schedule |
| 30 April 2004 | Provide schedule of estimated capital payments for June 2004, and reconciliation statement for April 2004 payments. | Pay Barnet Homes for estimated May 2004 schedule |
| 1 June 2004 | Provide schedule of estimated capital payments for July 2004, and reconciliation statement for May 2004 payments | Pay Barnet Homes for estimated June 2004 schemes, adjusted for reconciliation statement for April 2004. |
| 1 July 2004 | Provide schedule of estimated capital payments for August 2004, and reconciliation statement for | Pay Barnet Homes for estimated July 2004 payments, adjusted for reconciliation statement for |

¹ The financial plan which forms part of the delivery plan will deal with the procedures and practicalities. The two issues outlined in this Schedule are deemed sufficiently important to be included here. Both have statutory and contractual implications.

| | | |
|---|--------------------|-----------|
| | June 2004 payments | May 2004. |
| Subsequent months follow similar sequence | | |

6. In paragraphs 1 and 3 above, where the first day of the month is not a working day then the transfer shall be made on the immediately preceding working day.
7. Where Barnet Homes provides additional services outside of the Management agreement on an ad hoc basis it will invoice Barnet Council in advance for the agreed fee. Barnet Council undertakes to make payment within 28 days of the invoice.
8. Where appropriate, Value Added Tax at the current rate shall be added to all payments under paragraphs 1, 3 and 7 above.

The calculation of the organisation's fee

9. The annual management fee for 2004/5 (the Base Amount), shall be £25,000,000, payable in twelve monthly instalments in accordance with paragraph 1 above. The monthly instalments shall be in accordance with the cashflow schedule attached as Appendix 1.
10. On 1 April of each year, the Management Fee shall be increased in line with the average annual pay award payable to local authority employees, subject to adjustments that may be applicable as outlined below.
11. It is recognised that the number of dwellings to be managed will be reducing. The Management Fee will be adjusted downwards by xx% (or a specified amount?) for each loss of 100 dwellings.
12. Without prejudice to the above if, for whatever reason, Barnet Homes incurs or forecasts it is reasonably likely to incur a deficit of more than 0.5% of the Management Fee, then it shall be entitled to claim an appropriate adjustment to the fee. To obtain such an adjustment Barnet Homes will give Barnet Council notice of the claim as soon as practicable, giving full details of the reason and amount claimed, provide such additional information as required by the Council, and demonstrate to the reasonable satisfaction of the Council that all reasonable steps to recover or mitigate the deficit have been taken.
13. If Barnet Homes has complied with its obligations under paragraph 12 then the Fee shall be adjusted accordingly from a date to be agreed by the parties.
14. It is recognised that the level of Management Fee is to a great extent dictated by the position on the Council's Housing Revenue Account, in particular Housing Revenue Account Subsidy. The implications of Subsidy determinations and other known factors will be taken into

account by Barnet Council and Barnet Homes in the budget-setting process, and may require an adjustment to the Management Fee.

15. Where Barnet Homes' performance in certain areas exceeds its target and results in a financial surplus then it shall be allowed to retain this for use on any scheme outlined in the Delivery Plan or otherwise agreed with the Council. The areas identified are rent collection, service charge collection, void rent loss. (? anything else)

Monitoring Arrangements

16. The Head of Financial Services for Barnet Homes will prepare monthly monitoring reports for the Housing Revenue Account from June 2004 onwards for discussion with the Council's Borough Treasurer (or representative).
17. The Head of Financial Services for Barnet Homes will meet with the Council's Borough Treasurer (or representative) to review the capital programme on a quarterly basis.

The Seventh Schedule

Form of Licence For premises

As set out in clause 42 of this agreement.

The Eighth Schedule
Use of Council's Computers

Saffron

Tenancy Data
Waiting List
Repairs
Service Charges
Sales
Homelessness
Rents

Creditors

Finance info

Debtors

Leasehold Invoices (Switch to Saffron during 2004/5)
Other Misc. Invoices

SWIFT

Social services information

HBIS

Notepad

The Ninth Schedule

Services Supplied By Council

Likely SLAs for services to be supplied by the Council are to be agreed for the following services:

Borough Solicitor

- Legal

Borough Treasurer

- Accountancy and Income
- Insurance
- Audit

Head of Human Resources

- HR Strategy
- Pensions
- Payroll
- Health and Safety

Chief Valuer

- Office Accommodation
- Management of commercial premises – dealt with through Man agreement??
- RTB administration – dealt with through Man agreement??

Assistant Chief Executive

- Information Systems

Head of Customer Care

- Telephones
- Emergency Service

Head of Environmental and Neighbourhood Services

- Grounds Maintenance
- Stores
- Transport

BARNET HOMES

DELIVERY PLAN

| | |
|-------------------|---|
| Section 1 | Business Objectives |
| Section 2 | Working In Partnership with the Council |
| Section 3 | Service Improvement, Performance Targets & Best Value |
| Section 4 | Capital Programme & Procurement |
| Section 5 | Organisational Excellence |
| Section 6 | Resident Participation & Consultation |
| Section 7 | Equalities & Diversity |
| Section 8 | Quality Standards |
| Section 9 | Financial & Risk Management |
| Section 10 | Governance & Monitoring |