

**DATED**

**2005**



**MANCHESTER**  
CITY COUNCIL

**THE COUNCIL OF THE CITY OF MANCHESTER (1)**

**- and -**

**NORTHWARDS HOUSING LIMITED (2)**

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**AGREEMENT FOR  
HOUSING MANAGEMENT AND OTHER SERVICES**

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**L/TS  
SUSAN ORRELL  
CITY SOLICITOR  
MANCHESTER CITY COUNCIL  
TOWN HALL  
MANCHESTER**

**BETWEEN:**

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of Town hall, Manchester, M60 2LA (the "**Council**").

and

- (2) **NORTHWARDS HOUSING LIMITED** (Company Number: 05435061) whose registered office is at the 6th Floor, Hexagon Tower, Crumpsall Vale, Blackley, Manchester M9 8ZS (the "**Organisation**").

**RECITALS:**

- (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.

**OPERATIVE PROVISIONS:**

**1 Definitions and Interpretations**

1.1 In this Deed:

**"Additional Employees"**

means those employees recruited and employed by the Organisation wholly or mainly in the provision of the Services who are not Transferring Employees

**"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 7.

**"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 and including the financial plan, the performance plan, the resourcing plan

**“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

**“Bi-annual Sections of the Delivery Plan”**

mean those sections of the Delivery Plan which, in accordance with Clause 7, are prepared on a bi-annual basis

**“Car Leases”**

means the car leases referred to at Part II of the Fourth Schedule and included any renewals or substitutions thereof.

**“Car Loans”**

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

**“Code”**

means the Code of Practice on Workforce Matters in Local Authority Service Contracts as currently contained in ODPM Circular 03/2003 Annex D

**“Code Obligations”**

means the express obligations of the Organisation in clause 57.8 (other than clause 57.8(a))

**“Collateral Warranty”**

means the form of deed of collateral warranty at Schedule 10 with such amendments as may be agreed by the Council

**“Commencement Date**

means 12 December 2005

**“Community Strategy”**

means the Council policy of that name as the same may be amended or changed from time to time

**“Contract Period”**

means the period beginning on the Commencement Date and continuing for [five] years unless (a) terminated sooner in accordance with Clause 66 or in accordance with common law or statute or (b) extended in accordance with Clause 63.

**“Contract and Procurement Rules”**

means those rules so described in the Constitution of the Council

**“Contract Standard”**

means the standard to which the Services are to be provided set out in the Delivery Plan

**“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 and for the avoidance of doubt shall (save for where the Contract does not so admit) include the Procurement Projects.

**“Contractor”**

means any entity engaged by the Organisation by way of a Procurement Project

**“Constitution of the Council”**

means the Council’s documented orders and regulations (as may be added to amended, revoked, replaced from time to time) which must be complied with by the Organisation to the extent that they apply to the subject matter of this Agreement.

**“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 Director of Housing or such person as may be nominated by him in writing from time to time to act in its name for the purpose of the Agreement

**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”**

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

**“Draft Delivery Plan”**

means the draft document in the Delivery Plan Format prepared by the Organisation and comprising of the Organisation’s proposals for the Annual Sections of the Delivery Plan in each year it is submitted and the Annual Sections of the Delivery Plan and the Bi-Annual Sections in each alternate year. Following submission pursuant to clause 7.1 but prior to acceptance or rejection by the Council pursuant to clauses 7.4 and 7.5 (respectively) the Council and the Organisation may agree in writing to amendments to the document. The document will be deemed to be amended from the date of such agreement for the purposes of any acceptance pursuant to clause 7.4

**“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 dwelling house (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, garages and garage sites, 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 the individual agreed upon between the Council and the Organisation 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 nominated by him.

**“General Fund”**

means the fund the Council is required to maintain pursuant to section of Local Government Finance Act 1987

**“Good Industry Practice”**

means that degree of skill care prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced social or public housing management and maintenance provider (engaged in providing services as the same type as that of the Organisation)

**“Guidance”**

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

**“Housing Services”**

means all and any services reasonably necessary in order to comply with the requirements of the Delivery Plan in relation to the Dwelling (save for any Professional Services) and for the purposes of this Agreement services shall mean the services set out in Parts A & B of Schedule 1 of the Public Services Contracts Regulations 1993 (SI 1993/3228)

**“Introductory Tenancy Agreement”**

means the form of tenancy agreement (as may from time to time be replaced, added to or otherwise amended by the Council pursuant to clause 19.2) as appears in Annex 6 Part 1

**“Invitation to Tender”**

means each and any invitation to tender, invitation to negotiate to invitation to enter a competitive dialogue , brief or other document to be submitted to entities in connection with a Procurement Project so as to allow such entities to submit a Tender and includes all supporting documentation appended or accompanying such invitation tender, invitation to negotiate invitation to negotiate to invitation to enter a competitive discharge or brief

**“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.

**“Law”**

means:

- (a) any Act of Parliament
- (b) any subordinate legislation
- (c) any enforcement of a community right within the means of Section 2 of the European Communities Act
- (d) the common law, as interpreted by any applicable decision of a relevant Court of law which creates or changes a binding precedent

in each case in force in England.

**“Licence[s]”**

means the licence[s]] or heads of terms for licenses to be granted pursuant to Clause 42 in substantially the forms set out in the Seventh Schedule.

**“Management Fee”**

means the fee received by the Organisation from the Council for:

- (a) rent collection in accordance with Clause 53
- (b) other management services in accordance with this Agreement

calculated in accordance with the Sixth Schedule

**“Neighbourhood Wardens”**

means those Transferring Employees and Additional Employees employed in the provision of the Neighbourhood Warden Services

**“Neighbourhood Warden Services”**

means those services so described in Annexes 1 and 3

**“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 Lease set out in the Seventh Schedule.

**“Procurement Project”**

means each and any procurement process undertaken by the Organisation for which:

- (a) a Contract Notice must be placed in the Official Journal of the European Union in accordance with the Law. Where the Procurement Project results in the establishment of a Framework Agreement the Organisation will procure that each Contractor that is a party to Framework Agreement will enter into the Collateral Warranty in favour of the Council in respect of the works it has or will undertake pursuant to the Framework Agreement
- (b) if the equivalent procurement process were being undertaken by the Council it would be required to follow a competitive procurement procedure set out in the contract and procurement rules.

**“Professional Services”**

means any professional service required in connection with undertaking the Works, including (but not limited to) surveyors, architects, structural engineers, mechanical and electrical quantity surveyors, project managers or planning supervisors, but not for the avoidance of doubt, solicitors, barristers or accountants

**“Relevant Transfer**

means a transfer for the purposes of the TUPE Regulations

**“Right to Buy Lease”**

means a Dwelling sold on a leasehold basis pursuant to Part V of the Housing Act 1985 (the Right to Buy)

**“Secure Tenancy Agreement”**

means the form of tenancy agreement (as may from time to time be replaced, added to or otherwise amended by the Council pursuant to clause 19.2 that appears in Annex 6 Part 2

**“Services”**

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

**"Tenancy Conditions"**

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

**“Tenant Compact”**

means the document so named set out at Annex 4

**"Tenant Management Organisation"**

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

**“Tender”**

means any tender, bid, or other submission delivered by any entity in response to a Procurement Project undertaken by the Organisation

**“Tenderer”**

means any tenderer, bidder or other respondent to a Procurement Project

**“Term”**

means the period commencing on the Commencement Date and expiring on 11 December 2010 subject to earlier termination as herein provided.

**“Transferring Employees”**

means the employees occupying the posts listed in Part I of the Fourth Schedule together with any employees to whom the provisions of clause 56 apply.

**“TUPE”**

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

**“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 full details of which are set out in the Second Schedule.

**“Working Day”**

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

**“Works”**

means all any works reasonably necessary in order to comply with the requirements of the Delivery Plan in relation to the Dwellings and for the purposes of this Agreement works shall have the meaning ascribed to it in Regulation 2 and Schedule 1 of the Public Works Contract Regulation 1991 (SI 1991/12680).

1.2 In this Deed unless the context otherwise requires:

- (a) clause headings are inserted for convenience only and shall not affect the construction of this Deed and all references to clauses and sub-clauses are to clauses and sub-clauses of this Deed;
- (b) 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;;
- (c) references to persons include references to bodies corporate and unincorporated;
- (d) 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;
- (e) Reference to the Organisation shall be deemed to include the Organisation’s directors and employees and the Organisation’s agents, -contractors and guests or invitees (as referred to in Clause 37.2) unless the context otherwise requires;
- (f) 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; and

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

### **2 THE DELIVERY PLAN**

2.1 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:-

- (a) sets all the outputs of the Organisation, the key performance requirements of the Services and includes the performance standards expected;
- (b) 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;
- (c) 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.

### **3 COMMITMENT TO THE COMMUNITY**

3.1 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;
- Child Protection;
- Older People;
- Supporting People
- Health and Housing

- Regeneration

3.2 For such purposes the Organisation shall:-

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

#### **4. EQUAL OPPORTUNITIES**

4.1 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.

4.2 The Organisation shall follow the best professional practice in relation to equal opportunities and in particular (but without limitation) shall comply with:-

- (a) the Law as well as statutory and other official guidance and codes of practice;
- (b) the Council's own equal opportunities policies as the same may be adopted and amended from time to time.

4.3 The Organisation's Equal Opportunity Policy forms Annex 5. The application of this policy must include how the Organisation:-

- (a) employs and recruits staff;
- (b) deals with board membership and other issues arising from its constitution;
- (c) handles racial disputes and harassment;
- (d) commissions contractors, consultants and agents;
- (e) implements the Delivery Plan.

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

## **5 TENANT INVOLVEMENT**

- 5.1 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 include sufficient resources to ensure that the objectives of the Organisation's Tenant Compact are met.
- 5.2 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.
- 5.3 The Organisation's Tenant Compact objectives will be reviewed and consulted upon annually and sufficient resources will be provided for in the Delivery Plan to deliver these objectives.
- 5.4 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.
- 5.5 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**

### **6. DUTY OF BEST VALUE**

- 6.1 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.
- 6.2 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.
- 6.3 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.

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

### **7 FUTURE DELIVERY PLANS**

- 7.1** The Organisation shall provide to the Council's Representative by the date 3 months from the date of this Agreement an initial Draft Delivery Plan for the first year following the the date of this Agreement 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.
- 7.2** The Draft 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 change to the Delivery Plan if the measure were to be a Variation under the provisions of Clause 64.
- 7.3** When submitting the Draft 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. Where the Council declines to adopt such a suggestion the Council will respond in writing or in person to the Organisation in respect thereof and with reasonable expedition.
- 7.4** The Council shall give due consideration to the Draft Delivery Plan and shall within twenty (20) Working Days of receipt of the Draft Delivery Plan notify the Organisation as to whether the Council accepts the Draft Delivery Plan. If the Draft Delivery Plan is accepted by the Council the Draft Delivery Plan shall become the Delivery Plan from the date of the notification (in writing) of the Organisation by the Council.
- 7.5** If the Council notifies the Organisation that the Draft Delivery Plan is rejected (or makes no notification within the period specified in clause 7.4) the Draft Delivery Plan is deemed rejected by the Council. The Council shall provide to the Organisation at the same time as the notification of rejection of the Draft Delivery Plan its reasons for such rejection.
- 7.6** Senior representatives of the Council will meet to monitor the organisation perform and to discuss matters of mutual concern within thirty (30) Working Days of the receipt by the Council of the of the Draft Delivery Plan to review the previous year's performance against the targets set out in that year's Delivery Plan and, in the event that the Council has not accepted the Draft Delivery Plan pursuant to clause 7.4 or otherwise to review the Draft Delivery Plan. This meeting will form part of a series of meetings between senior representatives of the Council and the Organisation together with such other persons as either party may with the agreement of the other choose to invite including but not limited to nominees of the relevant tenant

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

**7.7** Where the Council's Representative is not satisfied with the Organisation's performance and/or the Draft Delivery Plan has not been accepted pursuant to Clause 7.4 (or otherwise) the Council shall be entitled to issue instructions to the Organisation to implement any changes which the Council may deem necessary including but not limited to instructions:

(a) to perform the current Delivery Plan; and/or

(b) to improve the Organisation performance;

and the Organisation must follow such to instructions

**7.8** For the avoidance of doubt the Council and the Organisation agree that in the event that the Draft Delivery Plan is not accepted by the Council each and every anniversary of the date of this Agreement the currency of the Delivery Plan (as amended pursuant to Clause 7.7) shall be extended until such time as the Draft Delivery Plan is accepted

**7.9** The Organisation agrees and acknowledges that 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 and warrants that the contents of the Delivery Plan are sufficiently accurate for these purposes.

**7.10** 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.

**7.11** 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 by mutual agreement.

## **8. THE ANNUAL PERFORMANCE PLAN**

**8.1** Throughout the Contract Period the parties shall work together to ensure that the Agreement and the Organisation's performance of the Services represents value for money and best value generally and achieves continuous improvement for the benefit of the Council.

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

(a) an analysis of the Organisation's objectives in respect of the Services;

- (b) an analysis of the Services throughout the previous twelve months, focusing on those areas which were successful and unsuccessful;
- (c) an identification in the Organisation's view of the reason for the successes and failures referred to in Clause 8.2.(1) recognising that:
  - (i) some of the matters may be due to the Organisation's performance of the Services (or that of its sub-contractors, employees or agents),
  - (ii) 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
  - (iii) other matters may be due to external or other circumstances;
- (d) performance targets (based on best value indicators as a minimum) for the subsequent year compared with performance in the current year;
- (e) a timetable of planned Best Value Reviews and a summary of any previous Best Value Reviews;
- (f) any other matters specified by the Secretary of State under Section 6 of the Local Government Act 1999;
- (g) 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 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.

## **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:-

(a) analyse whether the Organisation should be providing the Services and the level at which the Services are provided;

(b) analyse the Organisation's objectives in providing the Services;

(c) 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

(d) 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;

(e) assess the competitiveness of the Organisation's performance in providing the Services by comparison with similar service providers;

(f) meet the Council's statutory obligations to review all functions over a 5 year cycle;

(g) 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:-

- (a) returns to the Office of the Deputy Prime Minister (or such other ministry or governmental department as may from time to time have responsibility for social housing);
- (b) information required under the Report to Tenants Determination (as revised from time to time);
- (c) Housing Revenue Subsidy claim forms;
- (d) Housing Investment Programme submissions;
- (e) 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, private finance initiative single purpose vehicle companies, bodies and organisations in partnerships, and on 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**

- 15.1** 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.
- 15.2** For the avoidance of doubt it is hereby agreed and declared that the Council's aforesaid continuing obligations under Section 105 of the Housing Act 1985 extend to any decision by the Council to terminate the Agreement pursuant to Clause 7.10 and any decision to extend or not to extend the term of the Agreement pursuant to Clause 62 but not to any decision to terminate the Agreement pursuant to Clause 65.

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

### **16 FUNCTIONS DELEGATED**

- 16.1** 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.
- 16.2** The Organisation shall be empowered by the Council to and discharge on the Council's behalf and in the name of the Council all the powers, duties, rights and responsibilities contained in the Introductory Tenancy Agreement, the Secure Tenancy Agreement and those functions set out in the scheme of delegation in Annex 3

### **17 PROVIDING THE SERVICES**

- 17.1** In consideration of the Management Fee the Organisation shall at all times perform the Services to the satisfaction of the Council's Representative in accordance 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:-

(a) this Agreement;

- (b) the Delivery Plan and in particular (but without limitation) the key performance requirements of the Services set out therein;
- (c) 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
- (d) Council Guidelines and in particular (but without limitation) those relating to customer care;
- (e) any instructions issued to the Organisation by the Council Representative pursuant to or in connection with the Agreement;
- (f) the Law;
- (g) in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council;
- (h) 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;
- (i) 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;
- (j) in accordance with Good Industry Practice; and
- (k) in accordance with (and without breach of) any and all Introductory Tenancy Agreements and the Secure Tenancy Agreements
- (l) in accordance with the terms of any Right to Buy Leases

**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 and the Council shall respond thereto within such reasonable time as may be appropriate.

- 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:
- (a) all offices and work places of the Organisation for the purpose of monitoring and inspecting work being performed in order to provide the Services;
  - (b) 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;
  - (c) any personnel contractors or agents of the Organisation for the purpose of interviewing such persons in connection with the provision of the Services;
  - (d) 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 comply (with such changes as may be necessary) with the the Contract and Procurement Rules contained within in the Council's Constitution, so far as the same may be relevant to the delivery of the Services.
- 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:-

(a) establish quality management systems and procedures appropriate for the delivery of the Services; and

(b) 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.

## **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**

**19.1** 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 shall ensure that when recruiting persons to act as Neighbourhood Wardens:-
- (a) the most extensive available kind of checks are made with the Criminal Record Bureau
  - (b) a copy of the results of such checks are notified to the Council
  - (c) no person who is found to have any convictions following the results of the Criminal Records Bureau check is employed or engaged without the Council's prior written consent, such consent not to be unreasonably withheld or delayed
- 20.3** As part of the Delivery Plan the Organisation and the Council shall agree the number, composition and terms and conditions of the Neighbourhood Warden Service
- 20.4** The provisions of Clause 57.11 shall apply to persons employed by the Organisation to act as Neighbourhood Wardens upon the discontinuation of funding for the Neighbourhood Warden Service
- 20.5** 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:
- (a) the task or tasks such persons have to perform;
  - (b) all relevant provisions of the Agreement;
  - (c) all the Council's Guidelines in relation to customer care;
  - (d) all relevant policies, rules, procedures, standards and Standing Orders and Financial Regulations of the Council;
  - (e) all relevant rules, procedures, statutory requirements and EC Directives concerning health and safety, including the Council's health and safety policy.
- 20.6** . 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.

## **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. The Organisation shall ensure such assets shall be of a standard consistent with Good Industry Practice.
- 22.2** The Organisation shall be responsible for the 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 shall be entitled to permit the use of the Assets by any other body or person providing the Services (or any of them) or such other organisation providing the Services (or any of them) on behalf of the Council PROVIDED THAT the Council shall have served on the said owner after termination of this Agreement notice in writing requiring compliance with the said provision of the Hire Contract and upon the Council undertaking to pay all hire charges from the date of such notice
- 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 in any event shall not undertake any activity that would vitiate any insurance
- 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 at its own cost 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 Council shall reasonably require the Organisation to have any devices, insignia logos, or words displayed on any Assets as the Council may specify.

## **23 CONTRACTS AND PROCUREMENT**

- 23.1** The Organisation may act on behalf of the Council in administering [all] the Contracts (save for the Procurement Projects) and shall:-

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

- 23.2** The Organisation and the Council agree that the Organisation may undertake Procurement Projects PROVIDED ALWAYS that the Organisation shall:

- (a) consult with Council as soon as it has undertaken an estimate of the costs of the goods and/or services that are to be subject to the procurement; together with the key terms thereof and indicate whether the procurement will be a Procurement Project of the purposes of this clause 23.2;
- (b) to agree with the Council any amendment to the Collateral Warranty in respect of Procurement Projects to procure Professional Services prior to issuing an Invitation to Tender to Tenderers. In the absence of any agreement pursuant to this Clause 23.2 (b) the form of the Collateral Warranty will be in the form in Schedule 10;
- (c) to agree with the Council any amendment to the Collateral Warranty in respect of Procurement Projects other than for Professional Services prior to issuing an Invitation to Tender to Tenderers. In the absence of any agreement pursuant to this clause 23.2 (c) the form of the Collateral Warranty shall be as set out in Schedule 10;
- (d) to include with any Invitation to Tender the Collateral Warranty and include in the Invitation to Tender a direction that Tenderers should include in their Tender price any cost associated with entering into the Collateral Warranty ;

- (e) To supply, at the request of the Council copies of any Invitation to Tender or Tender submitted; and
- (f) To include in any agreement with any Contractor (or Contractors, in the event that more than one Tenderer is successful in a Procurement Project) an obligation to enter into the Collateral Warranty for the benefit of the Council

23.3 The Organisation must not engage any Contractor in connection with any activity that is the subject of a Procurement Project until the Organisation has delivered to the Council

- (a) a Collateral Warranty executed on behalf of the Contractor and the Organisation; and
- (b) a certified copy of the agreement between the Organisation and the Contractor

23.4 Nothing in Clause 23.2 shall in any way inhibit or interfere with the ability of the Organisation to

- (a) monitor and review the performance of those carrying out the Procurement Projects;
- (b) take all proper steps to enforce its rights under the Procurement Projects.

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

24.1 The Organisation shall not:

- (a) assign the Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof;
- (b) sub-contract the provision of the Services except as herein permitted 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;
- (c) The Organisation shall ensure that any sub-contractor permitted to perform any part of the Services under Clause 24.1(b). shall be fully supplied with all necessary information about this Agreement (including any relevant instructions given by the Council's Representative to the Organisation).

24.2 The Organisation shall not carry out work for or provide services to third parties without the Council's prior written consent (such consent not to be unreasonably withheld) save for the provision of services relating to compliance with the Construction (Design and Management) Regulations 1994.

24.3 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 USE OF COMPUTER SYSTEMS AND SOFTWARE**

- 25.1** 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 the Council may notify to the Organisation from time to time.
- 25.2** 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
- 25.3** 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
- 25.4** Without prejudice to Clause 25.9 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.
- 25.5** 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
- (a) 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;
  - (b) ensure that any computer software it uses is properly licensed;
  - (c) comply with all relevant requirements of any supplier of the Council's Computer systems and/or the Council's Software.
- 25.6** 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:
- (a) 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
  - (b) 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.

- 25.7** 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.
- 25.8** 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.
- 25.9** The Organisation shall comply with any security policy which may from time to time be issued by the Council relating to information technology, in whatever form and of whatever nature.
- 25.10** 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.

## **26 DATA**

- 26.1** Subject to the provisions of Clauses 25 and 27 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.
- 26.2** 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.
- 26.3** Without prejudice to Clauses 25.4 and 25.9 and subject to Clause 27 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

**26.4** The Organisation shall at all times ensure that where (following consent under Clause 25.5) the Organisation is using the Organisation's own computer systems:-

- (a) 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; and
- (b) 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

## **27 DATA PROTECTION**

**27.1** Without prejudice to Clause 26 and subject to Clause 25.9 the Organisation shall:-

- (a) comply with its obligations under the Data Protection Act 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
- (b) provide the Council with such information as the Council may require to satisfy itself that the Organisation is complying with the obligations referred to in Clause 27.1.(a)
- (c) provide the Council with all such assistance as the Council may require to enable the Council to comply with its obligations referred to in Clause 27.1(a)
- (d) 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

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

## **28 CONFIDENTIALITY AND FREEDOM OF INFORMATION**

**28.1** The Organisation shall not and shall ensure that its employees agents and subcontractors shall not except in the proper performance of the Services 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 or if so required by Law.

- 28.2** The parties recognise that the Council and the Organisation are subject to statutory duties under the Freedom of Information Act 2000 or under any regulations made under Section 74 of the Freedom of Information Act 2000 or any other applicable legislation of codes governing access to information and that the Council or the Organisation may be under an obligation to provide information on request

## **29 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.

## **30 INSURANCES**

- 30.1** Save as otherwise provided in the Licenses the Council shall during the currency of this Agreement be responsible for insuring its premises (which expression shall include self-insurance) against fire, explosion, storm and damage on such terms and against such other risks as the Council shall from time to time determine

- 30.2** 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 for death or personal injury:

(a) to the Council and any employee of the Council;

(b) to the employees of the Organisation; and/or

(c) to any other person

in the sum of at least £100,000,000 in respect of any one occurrence or series of occurrences arising out of one event and with an excess of not more than £20,000.

- 30.3** 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 in the sum of at least £100,000,000 in respect of any one occurrence or series of occurrences arising out of one event and with an excess of not more than £20,000.

- 30.4** Without prejudice to the generality of this Clause 30, 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.

- 30.5** The Organisation shall maintain insurance in the sum of £100,000,000 in respect of personal injury to or the death of any person under a contract of service with the Organisation and arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1988 and any statutory orders made thereunder.
- 30.6** The Organisation shall maintain all other insurances as may be necessary or prudent for the performance of the Agreement.
- 30.7** 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.
- 30.8** 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.
- 30.9** 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.
- 30.10** In the event that the Organisation fails to comply with a requirement of the Council in accordance with Clause 30.9 the Council shall be entitled to take either or both of the following steps:-
- (a) effect such insurances itself and reflect the costs of so doing in the then current Management Fee;
  - (b) commence termination or other action in accordance with Clause 66.
- 30.11** The Council acknowledges that the Organisation may (if the Council so agrees) discharge its obligations under this Clause 30 by procuring some or all the above insurances through or by the Council or its agents.
- 30.12** For the avoidance of doubt it is hereby agreed and declared that the obligation to take out insurances pursuant to this Clause 30 shall not extend to or require the Organisation to insure against any liability it may have to indemnify the Council pursuant to Clause 39.1

### **31 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.

### **32 PROVISION OF INFORMATION**

**32.1** Without prejudice to the other provisions of this Agreement the Organisation shall provide all relevant information which may be required by the Council in order that the Council can act fairly, properly and in accordance with its statutory obligations in connection with the provision of the Services or the future provision of the same or any similar services and also to deal with investigations or inquiries by the District Auditor, Ombudsman and similar persons or bodies. The Council may make a request for any such information at any reasonable time and the Organisation shall comply with that request as soon as possible.

**32.2** Subject to Clause 32.1 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.

**32.3** 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:-

- (a) at least once a month to discuss operational issues; and
- (b) 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

**32.4** Without Prejudice to Clause 7.8 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.

- 32.5** 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:-
- (a) any failure by the Council or its employees or agents or other persons providing services to the Council to meet obligations under this Agreement;
  - (b) any acts or omissions by the Council or such other persons as are referred to in Clause 32.5.(a) which prevent or hinder or are likely to prevent or hinder the Organisation from complying with its obligations under this Agreement; and/or
  - (c) 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.
- 32.6** 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 material expenditure
- 32.7** 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.
- 32.8** 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 FRAUD**

- 33.1** 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.
- 33.2** On receiving notification under Clause 33.1 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.
- 33.3** 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 33.1 or as a result of the Council's Representative's own information.

**33.4** The Council's Representative shall have the right (without prejudice to Clause 33.3) to require that the Organisation suspend from any further work on this Agreement any person suspected of fraudulent action or malpractice.

**33.5** 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.

## **34 COMPLAINTS**

**34.1** 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.

**34.2** Where required 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.

**34.3** The Organisation shall comply with and adopt as its own the Council's complaints policy as the same may be amended from time to time. The Organisation shall be at liberty to adapt the policy over time subject to any significant changes being approved by the Council.

**34.4** 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

**34.5** The Organisation acknowledges that for the purposes of this Clause 34 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.

## **35 LEGAL INVESTIGATIONS**

**35.1** The Organisation as soon as reasonably practicable 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

**35.2** 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 relevant disciplinary hearing internal to the Council and through the appropriate officers or employees shall give evidence in such inquiries or proceedings or hearings

- 35.3** 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

## **36 AGENCY**

- 36.1** 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, which circumstances, for the avoidance of doubt, include either party acting as servant or agent of the other in the procurement of the Contracts (including the Procurement Projects) and in the provision of works and services in connection with this Agreement inter se..

- 36.2** Subject to Clause 36.1, 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.

- 36.3** 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

## **37 SECURITY**

- 37.1** 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.

- 37.2** 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.

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

- 37.4** 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.

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

## **38 USE OF COUNCIL'S ASSETS**

- 38.1** 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:
- 38.2** the Organisation's obligations set out in Clauses 22.2, 22.5, 22.6, 22.7, 22.8 and 22.12 shall apply, mutatis mutandis, to the Council's Assets;
- 38.3** 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;
- 38.4** the Organisation shall be responsible for the security of such of the Council's Assets which it is permitted to use under this Clause 38 both when in use and when not in use;
- 38.5** 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 ;
- 38.6** 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.

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

### **39 INDEMNITY**

- 39.1** The Organisation shall, subject to clause 39.2, be responsible for, and shall release and indemnify the Council, on demand from and against all liability for:
- (a) death or personal injury;
  - (b) loss of or damage to property (including property belonging to the Council or for which it is responsible);
  - (c) breach of statutory duty; and
  - (d) third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of the performance or non-performance or breach by the Organisation of its obligations under this Agreement (including where such performance or non-performance or breach of the Organisation's obligations is by an employee, servant, agent of or contractor employed by the Organisation).

- 39.2** The Organisation shall not be responsible or be obliged to indemnify the Council for:

- (a) any matter referred to in clauses 39.1 (a) to (d) inclusive that arises as a direct result of the Organisation acting on the instruction of the Council or the Council's Representative whether pursuant to clause 32.4 and/or any other express provision hereunder;
- (b) any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Council or by the breach of the Council of 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** With effect from the Commencement Date the Council shall make available to the Organisation the Premises detailed in Part I of the Third Schedule on the terms and conditions set out in the forms of Licence or heads of term for Licence in the Seventh Schedule. Provided always the obligation to make available Hexagon Tower shall not take effect immediately but following the fit out of those premises. And provided further that the terms and conditions of the Licence therefor shall be agreed prior to the completion of the said fit out.

**42.2** Within one month of the date hereof the Organisation shall execute the Licenses and deliver the same to the Council. The Council shall thereupon itself execute the Licenses and deliver a duplicate or counterpart to the Organisation.

#### **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 31.

#### **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:-

- (a) immediate access to;
- (b) permission to copy and remove any copies of; and

(c) 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 THE COUNCIL AND INTERFACE PROTOCOLS**

**45.1** The Council shall supply to the Organisation to enable it to carry out the Services those services set out in Part I of the Ninth Schedule on the terms set out therein.

**45.2** The Council and the Organisation shall observe and comply with the provision of Part II of the Ninth Schedule in relation to interfaces between their respective functions, duties and obligations

#### **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 (at its own expense) 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 (or upon being informed of such occurrence by the Council) 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:-

- (a) 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;
- (b) 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;
- (c) to co-ordinate and supervise the operation of the provision of temporary accommodation described in Clause 48.2.(a);
- (d) 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;
- (e) whenever so requested by the Council to arrange for the provision of temporary accommodation for homeless persons and/or evacuees;
- (f) to manage the temporary accommodation secured pursuant to these provisions for so long as the emergency lasts; and
- (g) to produce monthly accounts to the Council itemising its reasonable costs incurred in the provision of the services detailed in Clauses 48.2.(a) – (g) 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.

**48.4** During the period when the Council is occupying the Premises under this Clause 48 the Organisation shall not be liable to the Council for any loss or damage caused as a result of the Council's occupation of the Premises and shall not be liable for any breach of this Agreement which is attributable to the Council's occupation of the

Premises pursuant to this Clause 47 save where the civil emergency giving rise to the Council's occupation of the Premises is a direct result of the Organisation's act or default

#### **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. As far as possible consonant with its statutory functions the Council shall try to consult the Organisation in relation to any matter which relates directly to the Services.

#### **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**

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

**52.2** The Council and the Organisation agree:

- (a) The Organisation shall at all times perform its obligations under this Agreement at its own risk and without recourse to Government (whether local, regional or central) or other public funds or guarantees save as

otherwise expressly provided for elsewhere in this Agreement or with the prior written consent of the Council.

- (b) The Organisation confirms that it has not applied and has no intention (as at the date of execution of this Agreement) of applying for any Government or European Union grants or funding or any other public funds or guarantees for the purpose of performing its obligations (or those of its subsidiaries) under this Agreement. If the Organisation (or its subsidiaries) is or becomes entitled to apply for any such grants or funding in relation to the carrying out of any of the Services it shall obtain the Council's consent before submitting the relevant application (such consent not to be unreasonably withheld). The Council reserves the right to impose conditions upon any consent and may (where it deems it in the interests of the tenants of Manchester to do so) impose a condition that should the Organisation (or its subsidiaries) receive any such grant or funding the payments made by the Council to the Organisation (or its subsidiaries) in accordance with this Agreement will be reduced in proportion to the grant or funding or by such lesser amount as the Council may determine.

### **53 RECOVERY OF RENT AND PAYMENT OF MANAGEMENT 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 included in the Management Fee and shall be determined as set out in the Delivery Plan and calculated in accordance with the Sixth Schedule

### **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) 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 or such other scheme for surpluses as may be agreed by the Council (such agreement not to be withheld or delayed).

### **55 INTEREST ON OVERDUE PAYMENTS & VALUE ADDED TAX**

- 55.1** 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 Co-operative 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.
- 55.2** 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**

### **56 EMPLOYEES**

- 56.1** The Council and the Organisation agree that the Transferring Employees will on the date of this Agreement transfer to the Organisation or the Organisation will comply with all the requirements and obligations which TUPE imposes on a transferee both before and after a transfer whether or not as a matter of Law TUPE applies to the provision of the Services.
- 56.2** The Council and the Organisation agree:
- (a) If TUPE does not apply to any person who is employed by the Council and assigned to services substantially equivalent to the Services immediately before the date of this Agreement, the Organisation shall offer to each and every such employee a new contract of employment commencing on the date of this Agreement under which the terms and conditions including full continuity of employment shall not differ from those enjoyed immediately prior to the date of this Agreement except insofar as such terms and conditions relate to an occupational pension scheme and the offer shall be in writing, shall be open to acceptance for a period of not less than ten (10) Working Days and shall be made:
- (i) if it is believed that TUPE will not apply to a person, or
- (ii) if it is believed that TUPE applies to a person but it is subsequently decided that TUPE does not so apply,
- as soon as is practicable and in any event no later than ten (10) Working Days after that decision is known to the Organisation.
- (b) Where any such offer as referred to in Clause 56.2(a) is accepted, the Council shall be liable for every increased staffing cost as if there had been a Relevant

Transfer in respect of each and every such employee who has accepted any such offer and the provisions of Clause 56.4 shall apply in the event of any resulting increase or decrease in the Remuneration Costs.

- (c) Where any such offer as referred to in Clause 56.2(a) is accepted, the Organisation shall act in all respects as if TUPE had applied to each and every such employee who has accepted any such offer and shall comply with Clause 57 of this Agreement in respect of each and every such employee.
- (d) For the avoidance of doubt, where any such offer as referred to in Clause 56.2(a) is not accepted and TUPE does not apply, such employee shall remain an employee of the Council.

**56.3** The Organisation shall:

- (a) as provided in Clause 56, become responsible for the payment of all salaries and provision of other benefits or emoluments and deductions (including without limitation tax and National Insurance contributions to retirement benefit schemes) in respect of Transferring Employees with effect from the date of this Agreement in the case of persons to whom clause 56.2(a) applies the date which is no later than that determined in accordance with that clause;
- (b) not during the Term make any significant amendments to the staffing structure for the ALMO agreed with the Council prior to the date of this Agreement and as further set out in the Delivery Plan 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); and
- (c) indemnify the Council and keep the Council indemnified in full from and against actions and proceedings and all liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with the employment or termination of employment of any Transferring Employees (or any employee who has accepted an offer of employment made pursuant to Clause 56.2) in respect of any matter which has arisen on or after the date of or in connection with any Relevant Transfer or the breach by the Organisation of any of the provisions of this Clause 56 including pursuant to Regulation 10 of TUPE and Article 7 of the Acquired Rights Directive (EC Directive 2001/23).

**56.4** The Council and the Organisation agree:

- (a) The Council has supplied to the Organisation the information, as at the date of this Agreement, which is contained in the Fourth Schedule regarding the identity, number, age, sex, length of service, job title, grade and certain terms and conditions of employment of and other matters affecting each of those employees of the Council who it is expected, if they remain in the employment of the Council until immediately before the date of this Agreement, would be Relevant Employees. The details are believed to be correct at the date of this

Agreement but the Council does not give any guarantees or warranties in this regard.

- (b) The Organisation has provided to the Council, and the Council has agreed the monthly costs of employing those employees of the Council who are at the date of this Agreement the Relevant Employees engaged in the provision of the Services. These costs (the "**Remuneration Costs**") have been calculated on the basis of (amongst other things) the information contained in the Council Employee Data.

**56.5** The Council shall and the Organisation shall take all reasonable steps, including cooperation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Agreement takes place smoothly with the least possible disruption to the services of the Council including the Services and to the employees who transfer.

**56.6** The Council shall supply to the Organisation on the date of this Agreement true copies of its union recognition agreement(s) and the Organisation shall in accordance with TUPE recognise the trade unions representing Relevant Employees after the transfer to the same extent as they were recognised by the Council before the date of this Agreement.

**56.7** The Council and the Organisation agree:

- (a) The parties will have regard to the Code in interpreting and applying the Code Obligations.

- (b) Subject to Clause 56.4 the Organisation shall procure that any person recruited by the Organisation and employed wholly or mainly in the provision of the Services after the date of this Agreement ("**Additional Employees**") shall be employed on terms and conditions of employment (including death and service and overall retirement benefits) which are, overall fair and reasonable and no less favourable than those of the Relevant Employees (or those who accepted offers of employment pursuant to Clause 56.2) engaged in the provision of the Services who are working alongside and holding the same or a similar position to that of the Additional Employees.

- (c) The Organisation shall consult with the recognised trade unions and where there is no recognised trade union, any other employee representative body on the terms to be offered to the Additional Employees pursuant to Clause 56.7(b).

- (d) During the term of this Agreement, the Organisation shall on request by the Council provide or procure that the Council is provided with such accurate and complete information as reasonably requested by the Council as soon as reasonably practicable, including the terms and conditions of employment of the Relevant Employees, (or those who accepted offers of employment pursuant to Clause 67.2) any Additional Employees and any Returning Employees, where this is required to monitor the Organisation's compliance with its Code Obligations.

- (e) The Organisation shall support any central government sponsored review and monitoring programme on the impact of the Code and on request by the Council provide the Council with such accurate and complete information as reasonably requested by the Council as soon as reasonably practicable in order to assist the Council in doing this.
  - (f) The Council and the Organisation shall in the first instance seek to resolve by discussions between them any complaints from any employee or any recognised trade union or other employee representative body in relation to compliance by the Organisation and of its Code Obligations.
  - (g) Where it appears to the Council or the Organisation that it is not possible to resolve the matter by continuing discussions between them pursuant to Clause 56.7(g) or where an employee of the Organisation or any recognised trade union or other employee representative body writes to the Council to confirm that it has been unable to resolve its complaint directly with the Organisation in relation to the Code Obligations:
    - (i) the Council shall first write to the Organisation to seek an explanation for the alleged failure by the Organisation to comply with its Code Obligations. The Organisation shall provide such an explanation in writing within five (5) Working Days of the receipt of the request from the Council;
    - (ii) if the response provided by the Organisation satisfies the Council that the Code Obligations have been met, then the Council will inform the complainant of this and the matter will be deemed to have been concluded;
    - (iii) in the event that the Council is not satisfied with the response provided by the Organisation the Council shall write to the Organisation within five (5) Working Days to require the Organisation to take immediate action to resolve this dispute; and
- .1.1.1 if, following such a request by the Council the Organisation still appears to the Council not to be complying with its Code Obligations, the matter shall be referred to the dispute resolution procedure at Clause 68 to determine whether the Organisation is in breach of its obligations under this Agreement.

**56.8** The Organisation shall, long enough in advance of a Relevant Transfer to allow the Council to carry out its obligations under Regulation 10 of TUPE and/or Article 7 of the Acquired Rights Directive (EC2001/23), provide to the Council details of any measures which the Organisation envisages it or they will take in relation to any employees of the Organisation who are or who will be the subject of a Relevant Transfer on the date of the Agreement or in accordance with Clause 56.10 or otherwise under this Agreement.

**56.9** The Council shall indemnify the Organisation against any actions and proceedings and all liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Organisation in respect of any Transferring Employee or in respect of any collective agreement or any contract of employment where the cause of action arose prior to the date of the Agreement and was not connected with the Relevant Transfer.

**56.10** Upon expiry or termination of this Agreement for whatever reason the provisions of Clauses 56.10(a) and 56.10(b) shall have effect in respect of those employees wholly or mainly engaged in the provision of the Services as the case may be as at the date of expiry or termination of this Agreement (the “**Returning Employees**”) (such date being termed the “**Return Date**”), regardless of whether there is a Relevant Transfer as a matter of Law in accordance with TUPE:

- (a) the Organisation shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Organisation (who had been engaged at any time by the Organisation in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Organisation up to the Return Date will be satisfied; and
- (b) the Organisation shall remain responsible for all the Returning Employees and other employees or former employees of the entity save to the extent that any such employees shall be inherited by a new Organisation or by the Council by virtue of TUPE in which case the Organisation shall provide the Council or that entity (as the case may be) with an indemnity against all claims, costs, demands, liabilities and expenses (including legal costs and expenses) arising from any claim whatsoever by any of those Returning Employees or other employees or former employees in respect of employment with the Organisation. The Council shall be entitled to assign the benefit of the indemnity to any successor entity in receipt of any or all of the Returning Employee.

**56.11** Without prejudice to Clause 56.10, upon the discontinuation of funding for the Neighbourhood Warden Service the following provisions of this Clause 56.11 shall apply:

- (h) the Organisation shall take all reasonable steps to internally redeploy any persons employed by the Organisation as Neighbourhood Wardens;
- (i) should the Organisation be unable to redeploy any Neighbourhood Warden who is a Transferring Employee the Council will make an offer of employment to all such persons on the same basis and subject to the same conditions as though they were Council employees whose existing posts had been determined as surplus to requirements and were subject to the Council's Redeployment Agreement

PROVIDED ALWAYS that

- (i) the aforesaid offer shall only apply to Neighbourhood Wardens who are Transferring Employees who have six months or more service whether with the Council and/or with the Organisation; and
- (ii) the Organisation has not made a reasonable offer of redeployment to any such Neighbourhood Warden which has not been accepted

AND PROVIDED FURTHER that such offer shall not apply to any Neighbourhood Warden who is an Additional Employee

**56.12** While funding for the Neighbourhood Warden Service for financial year 2006-2007 remains uncertain the Organisation shall not take any steps to fill any vacancies in the Neighbourhood Warden Service (whether or not such vacancies exist at the Commencement Date) unless and until the Council instructs the Organisation in writing that funding for financial year 2006-2007 has been secured which the Council will due with all due expedition

## **57 PENSIONS**

The Council will in relation to those Transferred Employees who are members of the Local Government Pension Scheme make such payments to the Administering Authority as are necessary to ensure that the accrued benefits of the Transferring Employees whilst in the service of the Council are fully funded as at the date of this Agreement

## **58 RIGHT TO REPRESENTATION**

Without prejudice to its obligations under the TUPE 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**

### **59 MEETINGS BETWEEN COUNCIL AND ORGANISATION**

Without prejudice to the specific provisions of this Agreement including (but not limited to) clause 7.6, 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.

### **60 COUNCIL'S REPRESENTATIVE**

**60.1** 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.

**60.2** 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**

### **61 TENANT MANAGEMENT ORGANISATIONS**

**61.1** 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.

**61.2** 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:-

- (a) provision of information and records about the Services
- (b) 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
- (c) attendance at meetings of such tenants
- (d) and such other help or advice as the Council may require to enable the Council to fulfil its statutory obligations

**61.3** 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 61.1 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):-

- (a) transferring data, records, statistics, files and other information in a format and manner prescribed by the Council
- (b) 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
- (c) transferring necessary equipment and materials as may reasonably be stipulated by the Council's Representative
- (d) establishing working arrangements with the Tenant Management Organisation

- (e) providing any other assistance reasonably needed to enable such transfer to take place.
- 61.4** 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 63 (giving three (3) months notice to the Organisation) and where such a Variation is made the amendment to the Delivery Plan in accordance with Clause 63.3 shall reflect the cost of providing such Services as remain to be carried out under this Agreement and if no such Services remain this Agreement shall terminate (and Clause 65.4 shall apply)
- 61.5** The Organisation will assume those responsibilities of the Council which are set out in any management agreement made between the Council and any Tenant Management Organisation whether such agreement exists at the date of this Agreement or arises during the currency of it and the Council shall be entitled to instruct a Variation to this Agreement to reflect such agreement in accordance with Clause 63
- 61.6** In the event that a Tenant Management Organisation to which responsibility for managing the Services has been transferred in accordance with this Clause 61 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 63 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 63.3.
- 61.7** The provisions of this Clause shall apply, mutatis mutandis, to the transfer of additional management responsibilities to an existing Tenant Management Organisation as well as any other Tenant Management Organisations.
- 61.8** The Organisation shall in complying with its obligations under this Clause 61 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**

### **62 DURATION AND RENEWAL**

- 62.1** This Agreement shall expire on the day prior to the fifth anniversary of the date of this Agreement unless extended by the Council pursuant to the following provisions of this Clause and subject to earlier termination as provided herein.
- 62.2** The Council shall be entitled (but without any obligation whatsoever) to extend the Term for one or more further periods of up to five years by giving notice in writing from the Council Representative (but, for the purposes of this Clause 62.2, not from any person appointed by the Council Representative pursuant to Clause 60.2) to this

effect to the Organisation no later than six calendar months before the date on which the Agreement would otherwise expire pursuant to Clause 62.1.

## **PART M – VARIATIONS ETC**

### **63 VARIATIONS**

**63.1** The Council may:

- (a) 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; and/or.
- (b) The Council may require the Organisation prior to the instruction of any Variation an estimate of likely increase or decrease consequent thereon (“the Estimate”)

**63.2** Reasonable notice for the purpose of Clause 63.1 shall be deemed to be either:-

- (a) 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
- (b) one month’s notice in any other case.

**63.3** Where a Variation is effected the requisite changes 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 to the Management Fee payable to the Organisation occasioned by such variation.

**63.4** 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:-

- (a) identify the relevant employee or employees;
- (b) quantify and substantiate the costs which the Organisation is likely to incur by reason of the said redundancy or redundancies; and
- (c) notify the Council of the same

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

- (i) take account of the potential redundancy costs to be incurred by the Organisation as a result of the Variation in ; or
- (ii) if the Council so determines meet the amount of the statutory redundancy entitlement of the relevant employee or employees

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

- 63.5** 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 63.4.
- 63.6** 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.
- 63.7** In the event of a dispute as to how any Variation affects the Delivery Plan pursuant to this Clause 63 the matter shall be decided by an Expert pursuant to Clause 67.

## **64 ALTERATIONS**

- 64.1** 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 61) a Variation shall be made to the Delivery Plan pursuant to Clause 63.3 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.
- 64.2** A "Substantial Change" for the purposes of Clause 64.1 shall mean any increase or decrease of twenty five (25) per cent or more in the number of Dwellings either:-
  - (a) being managed by the Organisation immediately after the Commencement Date; or
  - (b) 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.

- 64.3** The Organisation shall provide to the Council such information as the Council may require for the purposes of Clause 64.1.

**64.4** It is hereby agreed that no Variation shall be made pursuant to Clause 63.3 as a result of an Alteration if there is a compensating reduction or reorganisation of any part of the Services.

**64.5** If the Organisation disputes a Variation pursuant to Clause 63.3 arising from an Alteration it shall be entitled to refer the matter for determination by an Expert under Clause 67.

## **65 TERMINATION**

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

- (a) commits a material breach of any of the Organisation's obligations under the Agreement;
- (b) 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;
- (c) has any director or senior manager of it convicted of dishonesty;
- (d) becomes insolvent, 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;
- (e) has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver;
- (f) has a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- (g) has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- (h) has an administrator or an administrative receiver (as defined in the Insolvency Act 1986) appointed;
- (i) 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;
- (j) 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
- (k) has any director or senior manager convicted for a breach of any relevant health and safety legislation
- (l) undertakes any act which would be ultra vires under the Organisations Memoranda and Articles as filed at Companies House from time to time;

then in any such circumstances the Council may (if it so decides) exercise the rights described in Clause 65.3.

**65.2** 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 65.3.

**65.3** In the event of any one or more of the circumstances described in Clauses 65.1 and 65.2 or at any time upon its election the Council may take any or all of the following actions:-

(a) 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;

(b) 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

(c) determine the whole of this Agreement

and in the event of action pursuant to Clauses 65.3.(a) and 65.3.(b) a corresponding Variation to the Delivery Plan shall be made in accordance with Clause 63.3]

**65.4** If the Agreement is terminated in whole or in part as provided in Clauses 65.3 the Council shall:

(a) 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; and/or

(b) 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.

**65.5** 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) either or both of the following actions:-

- (a) 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;
- (b) carry out the relevant Services itself or by a third party and vary the Delivery Plan in accordance with Clause 63.3 to reflect the Council's loss, cost and expense in so doing

**65.6** 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:-

- (a) the Organisation shall, unless the Council requests otherwise, forthwith cease to perform any of the Services; and/or
- (b) 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 52; and/or
- (c) hand over this Agreement to the Council without detriment to the interest of the Council's tenants or other customers of the Council.

**65.7** 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 65.1 and 65.2 and then only for so long as (in the Council's reasonable opinion) the relevant circumstances subsist

## **66 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 save for any Variation agreed pursuant to clause 63.

## **67 DISPUTE RESOLUTION**

**67.1** 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 the Expert PROVIDED THAT this Clause 67.1 shall not apply to any dispute in relation to the Agreement of the Delivery Plan or the Annual Performance Plan.

**67.2** The Expert appointed under Clause 67.1 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.

**67.3** Any award of costs under Clause 67.2 shall be reflected in a variation to the current Delivery Plan.

- 67.4** Nothing in this Clause 67 shall bind or prevent either party from challenging the decision of the Expert at law for any reason.
- 67.5** 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**

### **68 NOTICES**

- 68.1** 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.
- 68.2** Notices served under Clause 68.1 shall be sent by first class on recorded delivery mail (or equivalent). All other notices shall be sent by such means as the sending party deems appropriate.

### **69 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.

### **70 PARTNERSHIPS**

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.

### **71 SURVIVAL OF THIS CONTRACT**

- 71.1** 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.

**71.2** 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.

**72 LAW**

This Agreement shall be governed by and construed according to English law in the English courts.

**73 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.

**74 ENTIRE AGREEMENT**

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

**PART O – PARTIAL STOCK PROVISIONS**

**75 NOMINATION RIGHTS AND AGREEMENTS**

The Organisation shall have no discretion in the exercise and implementation of the Council's allocation and nominations procedures save where such policies and procedures expressly permit the exercise of discretion or save as provided for in the Delivery Plan

**76 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.

**77 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, tenants welcome pack or otherwise.

## **78 INFORMATION FOR PROSPECTIVE TENANTS**

**78.1** 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.

**78.2** The Organisation and the Council shall also develop a website which will carry information about the Parties.

## **79 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.

## **80 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.

## **81 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 or elsewhere as the Council shall reasonably require.

**IN WITNESS** whereof this Agreement has been signed and delivered as a deed the day and year first before written

The **COMMON SEAL** of **THE COUNCIL OF THE CITY OF MANCHESTER** was hereunto affixed in pursuance of an Order of the said City

Authorised Signatory

**SIGNED AND DELIVERED** as a deed by  
**NORTHWARDS HOUSING LIMITED**  
acting by two directors or by one director  
and the company secretary

**Director**

Signature :

Name :

**Director/Company Secretary**

Signature :

Name :

**THE FIRST SCHEDULE**  
**CONTRACTS TO BE ADMINISTERED**

**THE SECOND SCHEDULE**

**COUNCIL'S ASSETS**

Bound separately

**THE THIRD SCHEDULE  
PREMISES AND OTHER PROPERTY INFORMATION**

New HQ:

Northwards Housing  
6th Floor  
Hexagon Tower  
Crumpsall Vale  
Blackley  
Manchester M9 8ZS

Existing Offices:

White Moss Road Housing Office  
White Moss Road  
Blackley  
M9 2LA

Monsall Street Housing Office  
Monsall Street  
Collyhurst  
M40 7GE

Cheetham Hill Road Housing Office  
549 Cheetham Hill Road  
Cheetham Hill  
M8 9NW

Housing Technical Services  
Parkside Centre  
Sheepfoot Lane  
Prestwich  
M25 0BW

Neighbourhood Wardens Office  
Suite 2B, 2nd Floor  
Wilsons Park  
Monsall Road  
Newton Heath  
Manchester  
M40 8WN

**THE FOURTH SCHEDULE**  
**TRANSFERRING EMPLOYEES ETC**

**PART I - TRANSFERRING EMPLOYEES**

Bound separately

<b>Post No</b>	<b>Designation</b>	<b>[Honorary]</b>	<b>Date of Birth</b>	<b>Age</b>	<b>Grade</b>	<b>Salary</b>	<b>Date Commenced</b>	<b>Entered Superannuation Scheme</b>	<b>Contractual Notice (Months)</b>	<b>Statutory Notice Months (M) Weeks (W)</b>

[Still awaited]

**PART II**  
**CAR LEASES**

Employee	Vehicle	Registered number	Lease Company	Start Date	End Date	Annual Rental
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None

**PART III**

**CAR LOANS**

Employee	Date of Loan	Amount Borrowed	Interest Rate	Total outstanding, including projected interest at the Commencement Date	Period	Final payment due
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None

## THE FIFTH SCHEDULE

### COMPUTER SYSTEMS AND SOFTWARE CURRENTLY USED BY THE COUNCIL

House90	Housing management	In-House system
DLO	Housing management	Steria
Anite OHMS	Housing management - leaseholders	Anite
Flare	Private sector grants, enforcement etc	Flare
Teleconnect	Call centre scripting	Initiative Software
Appointment Manager	Appointment management	Commontime
Delphi	Human Resources & payroll	Midland Software
Logos	Housing Benefit	Capita
GPA	Purchasing	In-house
Polar	Accounting	In-house
PARIS	Cash receipting	Anite
SPLS	Supporting People - Commissioning	In-house
Web Repairs	Web repair ordering and appointment booking by tenants	Anite
Homefinder	Web and phone based choice based lettings service	In-house
Web services	Range of interactive web services such as rent statements	In-house
Business Objects	Management information	Business Objects / in-house built data warehouse

**THE SIXTH SCHEDULE**  
**FINANCIAL ARRANGEMENTS**

Attached separately





**THE SEVENTH SCHEDULE**  
**FORM OF LEASE/LICENCE FOR PREMISES**

Bound separately

## **THE EIGHTH SCHEDULE**

### **USE OF COUNCIL'S COMPUTERS**

The Organisation will be permitted to access such data and information as is stored upon all MCC owned or licensed systems as relates directly to the provision of the Services and/or the Works or as relates to the Organisation, subject to the conclusion of formal service level agreements between the Council and the Organisation in respect thereof – see further in this regard the service level agreements set out in Part I of the Ninth Schedule.

In addition to the foregoing, the Organisation will be permitted to access to the Council-licensed Ordnance Survey computer data, and insofar as the CDM team from Housing Technical Services are being transferred to the Organisation, but will continue to work for the whole city, they will be given access to data and information on MCC owned or licensed systems on non-Northwards schemes to the extent necessary to enable them to produce health and safety plans etc.

**THE NINTH SCHEDULE**

**PART I**

**SERVICES SUPPLIED BY COUNCIL**

Bound separately

**PART II**

**INTERFACE PROTOCOLS**

Bound separately



**THE TENTH SCHEDULE**  
**THE FORM OF COLLATERAL WARRANTY**



**THE COUNCIL OF THE CITY OF MANCHESTER (2)**

- and -

**NORTHWARDS HOUSING LIMITED (3)**

**CONTRACTOR'S DIRECT AGREEMENT**  
in favour of The Council of the City of Manchester  
relating to the procurement by Northwards Housing  
Limited of works for the benefit of the tenants  
occupying the homes managed on behalf of the  
Council of the City of Manchester

**L/TS**

**SUSAN ORRELL**

**CITY SOLICITOR**

**MANCHESTER CITY COUNCIL**

**TOWN HALL**

**MANCHESTER**

**BETWEEN:**

- (1) **[THE CONTRACTOR]** (company number [ ] whose registered office is at (the "**Contractor**") and
- (2) **THE COUNCIL OF THE CITY OF MANCHESTER** of Town hall, Manchester, M60 2LA (the "**Council**") and
- (3) **NORTHWARDS HOUSING LIMITED** (Company Number: 05435061) whose registered office is at [ ], Manchester [postcode] (the "**Organisation**").

**RECITALS:**

- A The Council desires to obtain the improvement of its social housing stock through the use of an arms length management organisation and to this end created the Organisation.
- B By an agreement dated (the "**Management Agreement**") and pursuant to Section 27 of the Housing Act 1985 Council has appointed the Organisation to manage approximately 13,100 Dwellings in the North of Manchester and has (inter alia) delegated to the Organisation the function of procuring works of repair, maintenance and improvement to the aforesaid Dwellings ("the Works").
- C By an agreement dated (the "**Agreement**") the Organisation has appointed the Contractor to carry out the Works.
- D It is a condition of the Agreement that the Contractor enters into this Deed for the benefit of the Council on the terms and conditions set out below.
- E To the extent not expressly defined in this Deed all expressions shall have the respective meanings given to them in the Management Agreement.

**NOW THIS DEED WITNESSES** in consideration of the sum of £1.00 paid by Council, receipt of which the Contractor acknowledges, as follows:

**1 CONTRACTOR'S OBLIGATIONS**

- 1.1 The Contractor warrants to the Council that the Contractor has carried out and completed or will carry out and complete the Works, in accordance with and to the standard required by and subject to the terms of the Agreement and that it has complied with and will continue to comply with its obligations under the Agreement

**2 SUBSTITUTION PROVISIONS**

- 2.1 The Contractor warrants to the Council that it shall not terminate or treat as terminated its employment under the Agreement, or discontinue the provision of the services, without first giving to the Council not less than thirty five (35) days' prior written notice of the Contractor's intention to do so, specifying the grounds for so doing.
- 2.2 The Contractor warrants to the Council that any notice given pursuant to clause 0 shall be addressed jointly to and served simultaneously on the Council and the Organisation.

- 2.3 If the Council serves on the Contractor a notice in accordance with clause 2.3 the Contractor shall not terminate or treat as terminated its employment under the Agreement, or discontinue the provision of the Works, but service of such notice shall not prejudice any other right or remedy the Contractor may have under or in connection with the Agreement.
- 2.4 Unless the employment of the Contractor under the Agreement shall have terminated previously (and whether or not the Contractor shall have served notice on the Council pursuant to clause 0), if the Council serves upon the Contractor a notice to do so, the Contractor shall thereafter accept the instructions of the Council or its appointee to the exclusion of the Organisation under and in connection with the Agreement.
- 2.5 As against the Organisation and the Council the Contractor shall be entitled and obliged to rely upon and to comply with such notice served by the Council under clause 2.3, and shall not make any enquiry into the entitlement of the Council as against the Organisation to serve such notice.
- 2.6 As from the date of service of notice under clause 2.3, the Council or its appointee shall assume all the rights and perform all the obligations of the Organisation under the Agreement including the remedying of any outstanding breach of the Organisation under the Agreement which is capable of remedy, provided that this shall not affect or derogate from any right of action the Organisation may have against the Contractor in respect of any breach of duty of the Contractor under or in connection with the Agreement happening prior to the date of service of notice by the Council under clause 2.3.
- 2.7 Within thirty (30) days after serving notice under clause 2.3 the Council shall pay to the Contractor an amount equal to the sums then properly payable to the Contractor under the Agreement.
- 2.8 If the employment of the Contractor under the Agreement is terminated before service of any notice under clause 2.3, then if required to do so by notice served by the Council not later than twelve (12) weeks after the date of such termination, the Contractor shall enter into a new Agreement with the Council or its appointee on the same terms as the Agreement but with such revisions as the Council and Contractor shall reasonably agree to reflect altered circumstances. Forthwith upon the execution of such new Agreement, the Council shall in accordance with clauses 2.6 or 2.7 of an amount equal to the relevant sums owing from the Organisation, the Contractor shall assign to the Council all the Contractor's rights against the Organisation in respect of such unpaid sums, and shall pay to the Council any of the same subsequently received by it from the Organisation and repay to the Council any sums (or any part thereof) paid to the Contractor by the Council pursuant to clauses 2.4 or 2.7 subsequently shown not to have been owing to the Contractor from the Organisation.
- 2.9 The Organisation agrees to the foregoing provisions of this clause 2 and agrees to be bound by them.
- 2.10 For the avoidance of doubt, notwithstanding any other provision of this Agreement, after any notice is given under clause 2.4 and has become and after the period in clause 2.7 has elapsed, the Contractor shall be entitled to exercise any rights of

termination under the Agreement in respect of circumstances or matters thereafter arising in accordance with the terms of the Agreement.

### **3 PROFESSIONAL INDEMNITY**

- 3.1 The Contractor warrants to the Council that there is in force a policy of professional indemnity insurance covering the liabilities of the Contractor under the Agreement and under this Deed in respect of the risks usually covered by such insurance with a limit of indemnity of not less than [£INSERT PI FIGURE FROM CONTRACTOR'S AGREEMENT WITH THE ORGANISATION] and an excess of not more than [£INSERT FIGURE FROM CONTRACTOR'S AGREEMENT WITH THE ORGANISATION] for any occurrence or series of occurrences arising out of each and every event. The Contractor agrees to maintain such insurance during the for twelve (12) years from the completion of the expiry or termination of the Agreement (which ever is the sooner) provided such insurance is available to the Contractor on commercially reasonable terms having regard (inter alia) to premiums required and policy terms available.
- 3.2 If for any period such insurance is not available on commercially reasonable terms, the Contractor shall forthwith inform the Council, and shall discuss the means of best protecting the respective positions of the Council and shall, if the Council so requests, take out and maintain such lesser amount of professional indemnity insurance as is available to the Contractor on commercially reasonable terms.
- 3.3 When reasonably required to do so by the Council the Contractor shall provide to the Council reasonable documentary evidence that the insurance required hereunder is being maintained.

### **4 ASSIGNMENT**

The Council shall be entitled to assign to any person all of its rights under this Deed and in this Deed references to the Council shall where the context admits include its assigns provided that no more than two assignments of the rights under this Deed shall be permitted. In the event of any assignment pursuant to this clause 4 the Beneficiary will inform the Contractor and Employee in writing within 28 days of effecting such assignment

### **5 INTELLECTUAL PROPERTY RIGHTS**

- 5.1 For the purposes of this clause 0 "**Intellectual Property Rights**" means all intellectual property rights of whatever nature subsisting in any part of the world at any time including patents, registered designs and trademarks (whether registered or not) and applications for any of the foregoing copyright, design rights and protection similar to any of the foregoing in any part of the world.
- 5.2 The Contractor grants to the Council an irrevocable, non-exclusive royalty-free licence to use and reproduce any of the drawings, details, specifications and calculations which have been or are prepared by or on behalf of the Contractor in relation to the Works (the "**Documents**") and the Council may assign the licence and/or grant sub-licences in the terms of this licence but the intellectual property rights in the Documents shall remain vested in the Contractor. The Contractor will not be liable for any use of the Documents for any purposes other than those for which the same are or were prepared. The Council shall on written request be

entitled to be supplied by the Contractor with copies of the Documents (in electronic form where appropriate and if so requested), subject to payment by the Council of the reasonable costs of photocopying.

## **6 EXTRANEOUS RIGHTS**

This Deed shall not negate or diminish any duty or liability otherwise owed by the Contractor to the Council.

## **7 EXPIRY OF WARRANTY**

No proceedings shall be commenced against the Contractor under this Deed more than twelve (12) years after the expiry of the Agreement (or, if earlier, more than twelve (12) years after the employment of the Contractor under the Agreement is terminated).

## **7 EFFECT AND LIMITATION OF LIABILITY**

7.1 Notwithstanding execution and delivery of this Deed or any term or condition to the contrary the Council shall not be entitled to make any claim against the Contractor pursuant to this Deed or such terms or conditions unless the Management Agreement has been terminated.

7.2 The Contractor shall owe no duty, obligation or liability to the Council under this Deed which is greater or of longer duration than it would owe to the Council under the Agreement had the Council been named in place of the Organisation under the Agreement.

## **9 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

For the avoidance of doubt it is not the intention of any of the parties to this Deed to confer any rights upon any person not a party to this Deed except insofar as may be necessary to give effect to the provisions of clause 0 (Assignment) hereof.

## **10 GOVERNING LAW AND INTERPRETATION**

The law of this Deed is English law and the English courts shall have jurisdiction with regard to all matters arising therefrom.

IN WITNESS whereof this Deed has been executed and delivered as a deed the day and year first before written

**SIGNED** and **DELIVERED** as a deed by **[THE CONTRACTOR]** acting by two directors or by one director and the secretary:

**Director**  
Signature :  
Name :

**Director/Secretary**  
Signature :  
Name :

The **COMMON SEAL** of **THE COUNCIL OF THE CITY OF MANCHESTER** was hereunto affixed in pursuance of an Order of the Council of the said City:

.....  
....  
Authorised Signatory

**SIGNED** and **DELIVERED** as a deed by **NORTHWARDS HOUSING LIMITED** acting by two directors or by one director and the secretary:

**Director**  
Signature :  
Name :

**Director/Secretary**  
Signature :  
Name :

**ANNEX 1**

**THE INITIAL DELIVERY PLAN**

Bound separately

**ANNEX 2**

**THE DELIVERY PLAN FORMAT**

Bound separately

**ANNEX 3**  
**DELEGATION AGREEMENT**

<b>FUNCTION</b>	<b>PROBABLE RESPONSIBILITY IDENTIFIED IN THE GUIDANCE</b>  <b>X = RETENTION ✓ = DELEGATION</b>	<b>ACTIVITIES THAT ARE NOT SET OUT IN THE GUIDANCE THAT MIGHT BE DELEGATED</b>	<b>SECTION 27 CONSENT REQUIRED ?</b>	<b>FUTURE DELEGATIONS</b>
<b>1. Housing Strategy</b>				
1.1 Strategic work in partnership with RSLs and others	<b>X</b>			
1.2 Tenant involvement in strategy	<b>X</b>			<b>✓</b>
1.3 Market analysis	<b>X</b>			
1.4 Enabling and resource planning	<b>X</b>			
1.5 Contribution to corporate planning	<b>X</b>			
<b>2 Stock Condition (including house condition surveys)</b>	<b>✓</b>			
<b>3 Housing Needs</b>	<b>X</b>			
3.1 Assessments				

3.2 Surveys				
<b>4 Home Energy Conservation Act</b>	<b>X</b>			
<b>5 Housing land and other assets</b>	<b>✓</b>		<b>No outside s.27</b>	<b>-</b>
<b>6 Homelessness</b>	<b>X</b>			
<b>7 Housing Advice</b>	<b>X</b>			
<b>8 Private sector housing:</b>	<b>X</b>			
8.1 Renewal/redevelopment				
7.3 Renovation grants				
7.4 Disabled facilities grants				
8.4 Area renewal activity and clearance				
8.5 Work in relation to HMOs				
8.6 House condition surveys				
8.7 Home improvement agencies				
8.9 Fitness enforcement activity and other enforcement activity in respect of unsatisfactory housing conditions				
8.10 Empty property				
8.11 Energy efficiency				

<b>9 Co-ordination with Corporate Policy in Relation to:</b>			<b>X</b>	
Care Services				
Community safety				
Neighbourhood renewal				
Regeneration				
Housing and health				
Sustainable development				
Social exclusion				
Equalities				
<b>10 New tenancies</b>				
10.1 Housing Register		<b>X</b>		
10.2 Making best use of housing stock		✓		
10.3 Selection of tenants for vacant properties		✓		
10.4 Notification to and signing of new tenants		✓		
10.5 Transfer waiting list management		✓		
10.6 Granting of new tenancies		✓		
10.7 Successions		✓		
10.8 Mutual Exchange management		✓		
10.9 Homeswap		✓		
<b>11 Repairs and Maintenance</b>				

11.1 Stock condition survey local authority housing	✓	<b>ALMO only</b>		
11.2 Response repairs	✓			
11.3 Planned maintenance	✓			
11.4 Modernisation and improvements	✓			
11.5 Redevelopment and renewal	✓			
11.6 Energy efficiency	X			
<b>12 Void and Empty Property Management</b>				
12.1 Terminations	✓			
12.2 Inspection and repairs	✓			
12.3 Major repairs	✓			
<b>13 Tenancy Management</b>				
13.1 Estate Management	✓			
13.2 Enforcement of Conditions of Tenancy	✓			
13.3 Evictions and court action to support enforcement	✓			
13.4 Alterations to Conditions of Tenancy	X			
13.5 Illegal occupation	✓			
13.6 Responsibility for Anti Social Behaviour Orders	X			
13.7 Requests for Anti Social Behaviour Orders	✓			
<b>14 Estate Management</b>				
14.1 Caretaking housing schemes	✓			

14.2 Environmental services	✓			
14.3 Grass cutting/ground maintenance	✓			
<b>15 Supported Housing</b>				
15.1 Sheltered housing schemes	✓			
15.2 Call centres	X			
15.3 Supported housing schemes	X			
15.4 Refuges	X			
15.5 Homeless accommodation	X			
15.6 Temporary accommodation	X			
<b>16 Right to Buy</b>				
16.1 Valuations	X			
16.2 Administration and calculation of discount	X			✓
16.3 Approvals	X			✓
<b>17 Leasehold Management</b>				
17.1 Setting service charges	X			
17.2 Maintenance and repair of communal areas	✓			
17.3 Information to Leaseholders	✓			
<b>18 Finance</b>				
18.1 Rent setting	X			
18.2 Rent collection	✓			

18.3 Recovery of arrears	✓			
18.4 Recovery of other charges	✓			
18.5 Financial returns	✓			
18.6 Financial management	✓			
18.7 Insurance and claims (but not claims against the Council)	✓			
<b>19 Procurement</b>				
19.1 Policy	X			
19.2 Letting of contracts in relation to delegated activities (save in relation to Procurement Projects involving capital works)	✓			
19.3 Payment of contractor invoices	X			
<b>20 Tenant Involvement</b>				
20.1 Tenant Compact	✓			
20.2 Tenant association development	✓			
20.3 Information to Tenants	✓			
20.4 Reports to Tenants	✓			
<b>21 Other Assets (including lettings management and clearance)</b>				
21.1 Garages	✓			
21.2 Shops and buildings	X			

21.3 Estate Offices	✓			
21.4 Tenant Resource Centres or Tenant Offices	✓			
21.5 Meeting Rooms	✓			
<b>22 Clearance and Disposal of Dwellings</b>				
22.1 Sale of dwellings	X			
22.2 Clearance	✓			
22.3 Consultation	✓			
22.4 Decanting tenants	✓			

**ANNEX 4**

**TENANT COMPACT**

Bound separately

**ANNEX 5**  
**EQUAL OPPORTUNITY POLICY**

# Equal Opportunities in Employment Policy Statement

1. [Introduction](#)
2. [The Framework of this Policy](#)
3. [Implementing the Policy](#)
4. [Recruitment and Selection](#)
5. [Training and Career Development](#)
6. [Conditions of Service](#)
7. [Organisational Arrangements](#)
8. [Monitoring](#)
9. [Complaints Procedure](#)
10. [Monitoring of Complaints](#)
11. [Resources](#)

## 1. Introduction

1.1 This document is a statement of Manchester City Council's policy for achieving equality of opportunity in all of its employment practices.

1.2 As well as accepting its responsibilities under the Sex Discrimination Act, 1975, the Employment Equality (Sexual Orientation) and Employment Equality (Religion or Belief) Regulations, the Race Relations Act 1976, the Disability Discrimination Act 1995 and Equal Pay (Amendment) Regulation 1983, the Employment Relations Act 1999 and all amendments to these Acts, the Council is committed to broad principles of social justice. It confirms that equal opportunity extends into all of the services it provides, as well as in its employment policies and practices. However, it particularly recognises that many people are discriminated against and disadvantaged in employment, and that passive policies will not reverse this discrimination and disadvantage. Therefore, the Council will actively promote programmes of positive action, with targets, in favour of oppressed, discriminated against and disadvantaged people to ensure equality of opportunity in employment.

## 2. The Framework of this Policy

2.1 The Council fully recognises that its own employment practices are a major influence on the community at large and intends that its equal opportunities policies should reach out into the community it serves.

2.2 The policy applies to potential as well as actual workers and relates to all aspects of employment, including recruitment, pay, terms and conditions

of service, promotion, training, transfer, grievance and disciplinary procedures, and to the arrangements made for working in the Authority. The policy will be made known to all workers and applicants for jobs.

2.3 All sections of the population will have equal access to jobs offered by the Council and no applicant or employee will receive less favourable treatment than others because of her or his colour, creed, ethnic or national origin, religion or belief, disability, age (below 65), gender, marital status, sexuality, trade union activity or responsibility for dependants.

2.4 In order to combat indirect discrimination, no conditions or requirements will be applied to any City Council job which would have a disproportionately adverse effect on disabled people, either sex, lesbians or gay men, or a particular racial group or those with a particular religion or belief. The only requirements or conditions which will be applied will be those which are strictly justifiable and endorsed by the Council.

2.5 The Council actively monitors the make-up of its workforce, and aims to have a workforce which reflects the make-up of the population it serves. The Council collects data to monitor progress towards meeting equality targets for women, black and disabled employees.

### **3. Implementing the Policy**

3.1 In implementing the policy, the Council especially recognises the different and special needs of the following groups of people who may experience oppression, discrimination and disadvantage in society.

#### **3.2 Black and Ethnic Minorities People**

3.2.1 The City Council is committed to eliminating unlawful racial discrimination in all aspects of the Authority's functions, service provision, decision-making and employment procedures and to promote equality of opportunity and actively promote equality between different racial groups.

3.2.2 The Council is totally opposed to racism, whether it is perpetrated by the State its institutions, or individuals, and will combat all forms racial hatred and discrimination. It welcomes the fact that Great Britain is a multi-racial and multi-cultural society and will campaign vigorously against racist and sexist immigration laws. In employment, the Council's view is that, irrespective of the colour of their skin, or their ethnic or national origin, individuals either bring, or can be provided with, skills and knowledge which will enhance the services provided by the Council.

3.2.3 The Council's aim is to be a motive force for constructive radical change which will help to eliminate racism in decisions made about employment, whether in the Council itself or elsewhere. It particularly recognises that many people have racist attitudes, even if they do not believe in racist ideas, and that this is partly responsible for the acute unemployment experienced by black people. In the Council's own Departments and elsewhere, the Council is committed to redressing imbalances. The Authority's advertising procedures will be used to encourage black people to apply for Council vacancies. It will also institute programmes of positive action in training and set equality targets towards achieving a workforce which reflects, at all grades, the multi-racial composition of Manchester.

3.2.4 The Council denounces all forms of racial harassment including verbal or physical abuse or attack against colleagues or members of the public and will maintain grievance, harassment and disciplinary procedures and codes of practice to deal effectively with any incidents which may occur. The City Council fully endorses the recommendations of the MacPherson Inquiry and will meet its duty in responding to reported racist incidents in line with these recommendations.

3.2.5 Appropriate training on racism and anti-racist work will be provided by the Council.

### **3.3 Employees with a particular religion or belief**

3.3.1 It is the City Council's aim to eliminate unlawful discrimination on grounds of religion or belief in employment and all its related aspects such as training, promotion and dismissal. Discriminatory behaviour by employees and by service users will not be tolerated and appropriate action taken when this occurs.

3.3.2 The City Council is committed to protecting both staff and service users from harassment and bullying on grounds of religion and belief. The City Council's Grievance, Dignity at Work or Disciplinary procedures will be invoked to deal with any incident which may occur as a result of offensive behaviour by staff against fellow workers.

3.3.3 The City Council will also make every possible effort to accommodate employees who require access to a quiet place in which to pray, or who request that their rest break coincides with their religious obligations to pray, where this does not have an adverse impact on service provision or on

other staff. Applications for annual leave to be taken in blocks for the purpose of religious festivals will be considered where this does not conflict with legitimate business needs.

### **3.4 Gender**

#### **(i) 3.4.1 Women**

The Council is totally opposed to discrimination on the basis of gender and recognises that social attitudes deprive women in particular of opportunities to realise their full potential. The aim of the policy is to improve the opportunities available to women and includes a recognition of the skills and experiences of women which have traditionally been undervalued. Women and men will be encouraged to apply for all jobs unless there is a Genuine Occupational Qualification which restrict a job to one of the sexes. Opportunities for career counselling will be introduced and where women are under-represented or not represented at all in certain areas of work or management, the Council will provide special encouragement through targets for women to apply for such jobs. It will also take positive action in favour of women in providing training schemes to equip them with the skills to apply for those jobs.

The Council will maintain proper harassment, grievance and disciplinary procedures to deal effectively with cases of harassment, bullying or sexism. The Council will not tolerate any harassment and bullying, whether verbal or physical, by employees or the public. Sexism awareness and general training to break down sex stereotypes will be included in training programmes.

#### **(ii) 3.4.2 Transsexuals and people undergoing gender reassignment**

The City Council is committed to preventing discrimination against transsexuals and/or individuals undergoing gender reassignment in respect of pay, treatment in employment, and vocational training.

In furtherance of these aims the City Council will seek to support an employee who intends to, is undergoing or who has undergone gender reassignment in consultation with the individual concerned.

The City Council will actively intervene in cases of discrimination, harassment and bullying or other detrimental treatment.

### **3.5 Employees with Caring Responsibilities**

3.5.1 The Council confirms that its employment practices must be geared to the needs of both women and men, and must cater for the demands of responsibilities for children and dependants.

3.5.2 An increasing number of people with caring responsibilities wish to work and many do not wish to give up their careers as a result of these responsibilities. The Council recognises the acute problems experienced by those responsible for children and dependants during holidays and early evenings and of the need for flexible working arrangements to enable them to be with their dependants. Full childcare facilities for those who need it are regarded as a priority for Council employees. The Council is committed to reviewing measures to eradicate low pay, and improving the Council's provision regarding people with responsibilities for dependants.

### **3.6 Disabled People**

3.6.1 The Council is totally opposed to discrimination on the grounds of disability, whether such discrimination is intentional or through ignorance. The Council is committed to combating all forms of discrimination against disabled people. Disabled applicants will not be barred from selection on the grounds of their impairments nor will disability in itself be acceptable as a reason for dismissal from any Council job. Either alone, or in co-operation with the Government's 'Access to Work' Scheme, the Council will provide and/or adapt premises, facilities, or equipment wherever possible to remove disabling barriers to employment.

3.6.2 Positive steps will also be taken to attract disabled people to Council jobs, and the Council will set equality targets towards achieving a fair representation of disabled people at all grades. The Council adopts the social model of disability and will not discriminate against a person if the workplace is not yet accessible.

3.6.3 Disabled people will be given equal opportunities for training and career development - including additional training where necessary. Newly disabled employees who cannot continue their current duties will be retrained or redeployed, wherever possible.

3.6.4 The Council will not tolerate any harassment or bullying, whether verbal or physical, of disabled people by employees or the public. It is committed to maintaining harassment, grievance, disciplinary, and other codes of practice to deal effectively with any incidents which may occur.

3.6.5 The Council will guarantee an interview to any disabled person who demonstrates they meet the requirements of the Person Specification of any job for which they apply.

3.6.6 The Council will take steps to eradicate oppressive attitudes towards disabled people among its workforce and will run training courses to this end.

### **3.7 Sexual Orientation**

The Council recognises that lesbians and gay men experience very different forms of oppression and although there are some common areas, it is important to accept the need for specific policies for both lesbians and gay men.

#### **(iii) 3.7.1 Lesbians**

A person's sexuality is not a matter which the Council will take into account in determining suitability for recruitment, promotion, training or transfer for any Council post and will not be grounds for dismissal from any Council job. The Council accepts that an important step in removing discrimination on the grounds of sexual orientation is one of providing support and encouragement to workers not to conceal or deny their sexuality. It therefore welcomes job applications from lesbians and gay men and commits itself to ensuring that their right to be open about their sexuality will be respected.

It recognises that fear of discrimination is the major factor which forces lesbians to conceal their sexuality, to present themselves as heterosexual, or not to apply for jobs which they are as capable of doing as non-lesbians. In certain areas, such as work with children and young people, this discrimination is built on false assumptions, myths, and stereotypes about lesbians and has been widespread. The Council also recognises the double oppression of lesbians that as women they too suffer the social attitudes that deprive women of opportunities to realise their full potential. The Council understands that an important step in combatting both oppressions is in comprehensive awareness training and will run training courses to this end.

The Council recognises the need of lesbian mothers to work and confirms that its employment practices must be geared to the needs of lesbian mothers and lesbians responsible for children and dependants. The Council

ensures that all rights accorded to working parents should be the same for lesbians and/or their partners. Lesbians and their partners should be accorded the same benefits in terms of special leave as their heterosexual colleagues. The Council recognises the particularly discriminatory way the law is applied to lesbian mothers in custody cases and will therefore support any of its employees in this position and will give sympathetic consideration to applications for special leave.

The Council will not tolerate any harassment or bullying, whether physical or verbal, of lesbians and their children by members of the public or colleagues. It is committed to maintaining grievance, harassment, disciplinary, and other codes of practice to deal effectively with any incidents which may occur. The Council recognises that information and training to increase awareness and support for the policy relating to lesbians is an essential aspect of its development.

#### **(iv) 3.7.2 Gay Men**

A person's sexuality is not a matter which the Council will take into account in determining suitability for recruitment, promotion, training or transfer for any Council post. A person's sexual orientation will not be grounds for dismissal from any Council job. It recognises that fear of discrimination is the major factor which forces gay men to conceal their sexuality, to present themselves as heterosexual, or not to apply for jobs which they are capable of doing as non-gay people. In certain areas, such as work with children and young people, this discrimination is built on false assumptions, myths, and stereotypes about gay men, and has been widespread.

The Council accepts that an important step in removing discrimination on the grounds of sexual orientation is one of providing support and encouragement to workers to be open about their sexuality. The Council will work to create an atmosphere where gay men will feel more able to do this. It therefore welcomes job applications from gay men and commits itself to ensuring that their right to be open about their sexuality will be respected. Gay men and their partners should be accorded the same benefits in terms of special leave as their heterosexual colleagues.

The Council will not tolerate any harassment or bullying, whether physical or verbal, of gay men by members of the public or colleagues. It is committed to maintaining grievance, harassment, disciplinary, and other codes of practice to deal effectively with any incidents which may occur.

The Council recognises that information and training to increase awareness and support for the policy relating to gay men is an important aspect of its development.

### **3.8 Consultation**

The Council will consult fully with representatives of each of the groups outlined and with its Trade Unions, to ensure that its policies and practices reflect the true needs of groups which experience discrimination and disadvantage. It recognises that an equal opportunities policy statement on its own is insufficient to ensure real equality of opportunity. To achieve its aims, the Council will take positive action to make the policy fully effective.

## **4. Recruitment and Selection**

4.1 Job requirements will be reviewed to ensure that they do not discriminate directly or indirectly against any of the groups covered by the policy. The detailed policies promoting equality of opportunity in the recruitment and selection process are contained in a separate Code of Practice and must be adhered to at all times.

4.2 The selection process is of crucial importance to this policy, and every stage of the process must be carried out by people who fully understand and are committed to the principles of the policy. The Council will ensure that any employee or Councillor involved in any stage of the recruitment process is thoroughly briefed and trained in the provisions of this policy. It will determine target dates, by which time untrained persons, or those displaying negative attitudes towards the policy, will not be permitted to make decisions about the recruitment, promotion, or transfer of staff.

## **5. Training and Career Development**

5.1 The Council will provide resources for:

- a. training for all employees, giving priority to key supervisory and management decision makers, and for all those dealing directly with the public, to promote equal opportunities and combat all forms of discrimination, and
- b. positive action programmes to promote training for those disadvantaged groups to assist them to enter areas of employment where they are under-represented,
- c. assistance with re-entry to employment for employees who have had to take a career break, and

- d. assisting employees in identifying plans for their own training and development needs. Encouragement will be given to identifying career paths which fall outside traditional stereotyped roles.

## **6. Conditions of Service**

6.1 It is a condition of service that all Council workers must carry out all duties with full regard to the City Council's Equal Opportunities Policy. All Service Conditions will be regularly reviewed, in consultation with the Trade Unions, to ensure that they adequately provide for the needs of employees in the groups outlined in this policy.

6.2 Negative or prejudiced attitudes from colleagues or members of the public must not be used to justify any kind of direct or indirect discrimination.

6.3 Acts against colleagues or members of the public, whether verbal or physical, which after investigation are proved to be discriminatory, are acts of misconduct which will lead to disciplinary action.

6.4 The mode of dress of Council employees will follow guidance in accordance with the City Council's Customer Care Standards and individual service/ departmental guidance where applicable. Where appropriate due to Health and Safety, security, or where standard issue clothing is required, the Council will provide an appropriate form of clothing or allowance.

6.5 Display of material offensive to groups covered by the policy is contrary to the policy. Failure to remove such material when requested will be regarded as a disciplinary offence.

## **7. Organisational Arrangements**

7.1 This policy applies to all Council Departments, and all employees of the Council, particularly those who have responsibility for employment decisions about other people. Chief Officers are responsible for ensuring the implementation and monitoring of the effectiveness of the policy. Although it is the responsibility of each Chief Officer actively to promote equality of opportunity, the policy must be made to work by all employees in all Departments. Everyone has a duty, both morally and legally, not to discriminate. The Council will not accept discrimination by any of its employees.

## **8. Monitoring**

8.1 The effectiveness of the policy can only be judged by using information about how it is operating. The Council will use a monitoring system to collect data and allow assessment to be made by the Council, the Trade Unions, and the groups covered by the policy on the progress of developing a truly effective equal opportunity policy for employment in Manchester.

8.2 The aim of the monitoring system is to establish the extent to which ethnic minorities, women and disabled people are represented in:

- a. occupational and salary/wage groupings, and
- b. training and management development activities.

The Council will develop ways of monitoring the effectiveness of its policies towards lesbians and gay men, but this will not include keeping records on an individual's sexuality.

8.3 The monitoring system depends upon information being available. Therefore, all employees and job applicants will be asked to indicate their ethnic origin and whether they are disabled on a self-classification basis. The reasons for monitoring will be made clear to all job applicants. In addition, the City Council is required by law to publish an annual equality action plan for the authority and to monitor progress.

All City Council employees are required to give equality monitoring information as part of their conditions of service to ensure effective monitoring of progress towards equality of opportunity.

8.4 The City Council is required by law to give certain information about its employees to government departments and agencies principally in relation to tax and national insurance matters. As well as gender and address the main items of information concerning the type and dates of employment; make-up of earnings and expenses such as allowances for clothing and equipment and use of cars; and reasons for leaving employment. For some jobs which are subject to Central Government approval, information about the person whom the Council proposes to appoint is required to be given to the appropriate Government Department before an appointment can be made.

8.5 In addition, all racist incidents will be monitored by the City Council and reported to the police in accordance with guidelines set out in the MacPherson Inquiry.

8.6 However, the Council gives an absolute assurance that no information obtained as part of the monitoring of equal opportunity in employment by which an individual could be identified will be given to any government department or agency or organisation outside the City Council (without their prior consent).

8.7 At regular intervals, comparisons will be made to measure the rate of change towards achieving full equal opportunity in employment. The Council expects improvements to be made and targets met in the employment position of black people, women, lesbians and gay men and disabled people, and the Council will consult with Trade Unions and the groups covered by the policy to determine measurable and attainable equality targets, which will be regularly reviewed, in all areas of under-representation.

## **9. Complaints Procedure**

9.1 The Council will take seriously and will deal effectively with all complaints of discrimination on grounds of colour, creed, ethnic or national origin, disability, age below 65, gender, marital status, sexuality, trade union activity or responsibility for dependants, and anyone who makes a complaint or who gives evidence will not be victimised, treated less favourably than other employees or otherwise treated as if they are over-sensitive about discrimination.

### **9.2 Complaints, Grievances Disciplinary Action - Council Employees**

9.2.1 Complaints or grievances by employees or disciplinary matters affecting employees arising from this policy will be dealt with using the existing employee relations machinery. Nothing in this policy will prevent an individual or group from pursuing their rights through the local or national machinery or at an employment tribunal.

### **9.3 Complaints Procedure - People not Employed by the Council**

9.3.1 The following procedure will be followed.

9.3.2 Complaints by people not employed by the Council shall be made to the Chief Officer responsible for the department or area of service where the breach of the policy has taken place.

9.3.3 The Chief Officer will acknowledge, in writing, the receipt of the complaint.

9.3.4 The Chief Officer will be responsible for making sure that the complaint is investigated and the officer directed to consider the complaint

will conduct investigatory hearings, hear evidence and collect information as is considered necessary to a proper investigation of the complaint. At all stages the complainant and any employee complained against, shall, if they wish, be entitled to Trade Union representation, or in the case of the complainant, representation by a friend.

9.3.5 The statement of findings and recommendations arising out of investigation of the complaint will be made available to the complainant and to any employee directly affected by the recommendations.

9.3.6 If the recommendations of the Chief Officer, or the actions arising from them, result in a disciplinary hearing involving any employee of the City Council, the matter shall, from that time, be dealt with in accordance with the agreed disciplinary procedure including the normal rights to Trade Union representation and appeal.

9.3.7 If the complainant is not satisfied as to the outcome of the investigation she/he is not entitled to the provisions of the grievance procedure which applies only to employees. However, should the complainant be dissatisfied with the outcome or handling of the complaint she/he may raise the matter with the Head of Personnel who will review the situation and inform the complainant of the outcome.

9.3.8 In cases where a racist incident is reported the City Council will respond in accordance with guidelines set out in the MacPherson Inquiry.

#### **9.4 Statutory Rights**

9.4.1 Nothing in the procedures for dealing with complaints about breaches of the equal opportunities in employment policy shall limit or affect the statutory rights of a complainant.

#### **10. Monitoring of Complaints**

10.1 A written record of every complaint from existing and potential employees, whether made orally or in writing, must be produced.

10.2 A written report outlining how the complaint was dealt with, and any action taken by the Department in response to it, must be produced and a copy of this report must be given to the complainant and, in the case of existing employees the relevant Trade Union.

#### **11. Resources**

11.1 Manchester City Council is an equal opportunity employer and will devote resources to achieve the aims set out in this policy

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last updated:

**ANNEX 6**

**PART 1**

**INTRODUCTORY TENANCY AGREEMENT**

Bound separately

**ANNEX 6**

**PART 2**

**SECURE TENANCY AGREEMENT**

Bound separately