



Appendix B

I

dated 2009

Cheltenham Borough Council
and
Cheltenham Borough Homes Limited

Agreement for housing management and other services

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Agreement for Housing Management and other services

dated 2009

Parties

- (1) **The Borough Council of Cheltenham** of Municipal Offices, Promenade, Cheltenham GL50 1PP (the **Council** and which shall include any statutory successors); and
- (2) **Cheltenham Borough Homes Limited** whose registered office is situated at Cheltenham House, Clarence Street, Cheltenham GL50 3JR (**CBH**).

Introduction

- (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 agreed on 31 March 2003 that CBH should exercise such of the Council's management and other functions as specified in an agreement between the parties entered into on 31 March 2003 as amended.
- (C) The Council and CBH have agreed to extend the term for CBH's provision of the Services and have further agreed to work together within a spirit of mutual cooperation and partnership.
- (D) The Council and CBH have agreed that CBH shall continue to provide and the Council shall co-operate with it in providing the Services in the manner and upon the terms hereinafter set out.

Agreed terms

Part A - Partnership in delivery between CBH and the Council

1 The Business Plans

1.1 The Business Plans shall comprise of:

- The Housing Revenue Account business plan
- The CBH Business Plan

1.2 CBH shall prepare the Business Plans, the format of which are set out in Schedule 1.

1.3 The Business Plans shall:

- 1.3.1 set all the outputs of the Services, the key performance requirements and include the performance standards expected;

- 1.3.2 include the overall strategy for the Services and how CBH will deliver the key strategic goals of the Council (as communicated to CBH pursuant to clause 2) and the community the Council represents;
- 1.3.3 detail the financial and staffing resources required to enable CBH to deliver the Business Plans and perform the Services with skill, care and diligence required by clause 12.

2 **Commitment to the Community**

2.1 The Services to be carried out by CBH as set out in the Business Plans are part of an important relationship between the Cheltenham Strategic Partnership, the Council and the community it represents. The Cheltenham Strategic Partnership's Sustainable Community Strategy contains the key objectives of this relationship. CBH shall help deliver those objectives. CBH through the Business Plans and the Annual Plans will ensure that its policies and activities support the objectives of all relevant Council strategies that detail the contribution that the Council will make towards delivering the community's ambitions, aspirations and needs (the **Strategies**) including the Council's Sustainable Community Strategy and those other strategies which are entitled, relate to or are the equivalent of the following:

- 2.1.1 Cheltenham Borough Council Business Plan
- 2.1.2 Housing;
- 2.1.3 Community Cohesion;
- 2.1.4 Economic Development;
- 2.1.5 Financial Inclusion;
- 2.1.6 Social Inclusion;
- 2.1.7 Crime & Disorder
- 2.1.8 Neighbourhood Renewal;
- 2.1.9 Community and Tenant Empowerment;
- 2.1.10 Home Energy Efficiency;
- 2.1.11 Safer Communities;
- 2.1.12 Stronger Communities;
- 2.1.13 Older People;
- 2.1.14 Supporting People;
- 2.1.15 Health and Well Being;
- 2.1.16 Children and Young People;

2.1.17 Sustainable Living and Environmental Quality (Low Carbon).

together with other strategies that are notified by the Council to CBH which in the reasonable opinion of the Council impact on the delivery of the Services.

2.2 For such purposes CBH shall:

2.2.1 ensure relevant staff are trained and understand the Strategies;

2.2.2 proactively support relevant strategic partnerships;

2.2.3 undertake relevant activities to provide information to help the Council up date and develop the Strategies;

2.2.4 demonstrate in the Annual Plans how resources will be used to meet the objectives of the Strategies.

3 Equality and Diversity

3.1 The Council has a strong commitment to equality and diversity and in providing the Services CBH shall operate relevant policies and procedures in all aspects of its work. By implementing these policies and procedures CBH shall ensure that it does not discriminate against any person or other organisation on the grounds of race, ethnic origin, disability, nationality, gender, sexuality, age, class, appearance, religion, responsibility for dependants, unrelated criminal activities, being HIV positive or having AIDS, or any other matter which causes a person to be treated with injustice.

3.2 CBH shall follow the best professional practice in relation to equality and diversity and in particular (but without limitation) shall comply with all relevant legislation as well as statutory and other official guidance and codes of practice.

3.3 CBH shall provide such information as the Council may reasonably request for the purpose of assessing CBH's compliance with this clause 3.

4 Tenant, leaseholder and resident involvement

4.1 The Council has a partnership with its tenants and leaseholders and to further this relationship CBH will facilitate the development of a range of mechanisms to enable tenants and leaseholders to be at the heart of the organisation's decision making in relation to (and not limited to):

- Strategic planning and development
- Investment decisions
- Policy development
- Service standards, improvement and quality assurance
- Development of inclusive and sustainable communities

- 4.2 CBH will honour its own tenant compact and leaseholder compact so as to support and encourage tenant involvement. The Business Plans will include sufficient resources to ensure that the objectives of CBH's tenant compact are met.
- 4.3 CBH's tenant compact will be amended from time to time so far as necessary to comply with all statutory requirements and other official guidance issued from time to time and follow best professional practice.
- 4.4 CBH's tenant compact objectives will be reviewed and consulted upon annually and sufficient resources will be provided for in the Business Plans to deliver these objectives.
- 4.5 CBH's tenant compact will include strategies for involving 'difficult to reach' groups and those tenants who do not normally get involved in the management of their homes.
- 4.6 CBH will take necessary action to demonstrate that tenants are satisfied with the opportunities and mechanisms available to them to influence decision making.

5 **Business Plans and Annual Plans**

- 5.1 The required format of the Business Plans and Annual Plans is shown at Schedule 1.
- 5.2 CBH shall prepare and provide to the Council the Business Plans for the financial years 2010/11 to 2015/16 (which shall include the Annual Plan for the financial year 2010/11) and the parties shall endeavour to agree such plans by 30 November 2009.
- 5.3 Following the settlement of the initial Business Plans under Clause 5.2, the Business Plans shall be materially reviewed every five years unless there are significant external events or changes in legislation which (is the reasonable opinion of either Party) require an earlier review.
- 5.4 The Business Plans shall be updated annually by CBH to reflect changes to financial forecasts and performance achievements and submitted with a draft Annual Plan for the following financial year to the Council's representative by 1st December each year.
- 5.5 When submitting the draft Annual Plan CBH shall identify any material variations from the existing Business Plans including proposals for improvements in, or development of the Services. The Council will consider any such variations, but will be under no obligation to adopt any or all of them.
- 5.6 The Council shall give due consideration to the draft Annual Plan and shall by 31st December each year, notify CBH as to whether it is agreed or identify required amendments. Where CBH shall have prepared the draft Annual Plan in accordance with the existing Business Plans, then the Council shall approve the draft Annual Plan unless such approval would have a material adverse effect on the Council's Housing Revenue account (or its general fund to the extent that CBH's delivery of the Services impacts on the Council's general fund).
- 5.7 If the Council shall notify CBH that the draft Annual Plan is not acceptable, further negotiations shall take place to achieve a mutually agreed resolution (such negotiations to conclude within one month of the Council's notification under this clause 5.7).
- 5.8 In the event that either

- 5.8.1 the initial Business Plans are not agreed under clause 5.2 or
- 5.8.2 the revised Business Plans are not agreed under clause 5.3 or
- 5.8.3 the Annual Plans are not agreed under clause 5.7

then the dispute shall be referred for resolution by the Expert under clause 60. Until the Expert's decision is notified to the parties, the then existing Business Plans and/or Annual Plans shall continue, as modified by any requirements that the Council shall (in its absolute discretion) determine. For the purposes of the settlement of the Business Plans and Annual Plans under clause 5.2, the current delivery plan shall be deemed to be the Business Plan for the purposes of this clause 5.8.

- 5.9 Following the period of public consultation on Council budget proposals CBH shall submit a final Annual Plan to the Council's representative by 1st February each year, incorporating such changes as agreed by both parties for Council approval at its meeting which determines housing rents for the following financial year.
- 5.10 A summary of the Annual Plan will be provided in a form approved by the Council Representative to be placed in the public domain.
- 5.11 Nominated officers of the Council and CBH will meet in accordance with Clause 27.3 to review the performance of CBH against the approved Annual Plan for the year.
- 5.12 Where the Council is not satisfied with CBH's performance following the reviews in clause 5.11 CBH shall be required to submit an action plan to the Council's Representative which seeks to remedy the identified deficiencies in performance.
- 5.13 CBH shall submit an annual report to the Council's Representative by 31st July each year which compares the performance of CBH in the previous financial year against the approved Annual Plan for that year.

Part B – Performance responsibilities of CBH

6 Official Returns, Housing Inspections Etc

- 6.1 CBH 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:
 - 6.1.1 returns to the government department Communities and Local Government;
 - 6.1.2 information required under the Report to Tenants Determination (as revised from time to time);
 - 6.1.3 Housing Revenue Subsidy claim forms;
 - 6.1.4 Housing Investment Programme submissions;
 - 6.1.5 submissions or responses in respect of Comprehensive Area Assessments, value for money and other relevant inspections (whether carried out by the Housing Inspectorate or otherwise).

- 6.2 CBH 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.
- 6.3 CBH 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.
- 6.4 CBH will provide all necessary information as the Council reasonably requires for the strategic planning of the delivery of housing and related support services and the support of stronger and sustainable communities.

Part C – Strategic Responsibilities of CBH

7 Advice and support in developing corporate strategies and reviews in the Council

CBH is a strategic partner of the Council and a significant user of the Council's General Fund services. The views of CBH as a stakeholder, a service user and service provider are essential in the development of the Council's corporate strategies and reviews of services. CBH will respond promptly to consultation requests on such corporate issues and will provide information as required.

8 Representing the Council in related or partnership activity

CBH will at the request of the Council's Representative or in pursuit of Business Plans objectives work with other agencies, bodies and organisations in partnerships, foras and projects. This might include (but not be limited to) area and other consultative foras, community safety meetings, regeneration partnerships and multi agency and safeguarding case conferences, risk and needs assessments.

Part D – Strategic responsibilities of the Council

9 Consultation with statutory and other bodies and support of CBH

- 9.1 The Council's Representative shall carry out any and all consultations and negotiations with statutory or voluntary bodies in relation to such matters as required and CBH shall when required to do so by the Council's Representative (acting reasonably) provide information, advice and assistance to support such consultations or negotiations.
- 9.2 Subject to clause 9.1 CBH shall carry out all other consultations or negotiations with the said statutory or voluntary bodies and shall respond to any enquiries from such bodies in relation to the circumstances of individual tenants or applicants for accommodation on such a basis (as to confidentially and otherwise) as is appropriate and consistent with both CBH's and the Council's legal obligations and duties.
- 9.3 The Council undertakes to assist CBH:
- 9.3.1 by giving formal and reasonable consideration to the use of its statutory powers to assist CBH in the fulfilment of its objectives in the Borough of Cheltenham;
 - 9.3.2 (not extending to any financial commitment or to fetter its discretion as planning authority) in the procurement and/or assembly of suitable sites for the purpose

of building new Social Housing (as defined in Part 2 of the Housing and Regeneration Act 2008).

10 **Consultation with Tenants**

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

Part E – Responsibilities of CBH

11 **Functions delegated and potential future delegations**

11.1 The functions delegated by the Council for the purposes of this Agreement shall be those functions or activities identified in Schedule 2 as the responsibility of CBH.

11.2 As part of the settlement of the Business Plans and Annual Plans pursuant to clause 5 CBH shall be entitled to propose suggested measures that might be taken by CBH or the Council to improve the provision of social housing services or functions in the Borough of Cheltenham and which may include a proposal to delegate further functions from the Council to CBH (a **Proposal**).

11.3 The Council shall give due and reasonable consideration each such Proposal and as part of the settlement of the Business Plans notify CBH as to whether such Proposals are agreed. If not agreed, then the Council shall explain the reasons why such Proposals are not agreed and the amendments (if any) which would render the Proposal potentially acceptable to the Council (in which case the parties shall work in good faith to implement such Proposal).

12 **Providing the Services**

12.1 In consideration of the Management Fee, CBH shall at all times perform the Services to the satisfaction of the Council's Representative in accordance and in compliance with the Contract Standard. The **Contract Standard** is the standard which shall require CBH to perform the Services with all due skill, care and diligence and in accordance and otherwise in compliance with:

12.1.1 the Business Plans and in particular (but without limitation) the key performance requirements of the Services set out therein;

12.1.2 any current performance indicators issued by the Government or regulatory body which are relevant to the performance of the Services or any part thereof;

12.1.3 any reasonable instructions issued to CBH by the Council Representative pursuant to or in connection with the Agreement;

12.1.4 all legislation;

12.1.5 in a manner which shall preserve, promote and enhance and shall not prejudice the reputation and interests of the Council;

- 12.1.6 in good and full co-operation with any other company or consultant engaged by the Council to carry out related or relevant works or services on behalf of the Council; and
- 12.1.7 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.
- 12.2 CBH shall inform the Council's Representative promptly and confirm in writing if CBH is unable or fails to provide the Services or any part thereof, or if CBH 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 CBH 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 CBH from any of its obligations under the Agreement.
- 12.3 Should CBH require any further instruction or information which is necessary for or in connection with the provision of the Services, CBH shall make a written application in adequate detail for the same to the Council's Representative.
- 12.4 CBH 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:
 - 12.4.1 all offices and work places of CBH for the purpose of monitoring and inspecting work being performed in order to provide the Services;
 - 12.4.2 all offices and work places of CBH for the purpose of inspecting any or all records and documents in the possession, custody or control of CBH in connection with the provision of the Services;
 - 12.4.3 any personnel or agents of CBH for the purpose of interviewing such persons in connection with the provision of the Services;
 - 12.4.4 technology, resources, equipment, systems, and procedures used or proposed to be used in connection with the provision of the Services.
- 12.5 When managing Council contracts or contractors employed by the Council CBH shall at all times comply with the Council's Standing Orders and Financial Regulations as the same may from time to time be amended, varied or replaced.
- 12.6 If CBH is unable or fails to provide the Services or any part thereof in accordance with the requirements of clause 12.1, the Council may take steps under Clauses 58 and 59.
- 12.7 CBH 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) CBH 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.

- 12.8 CBH 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 CBH fails to provide accounts in accordance with this clause 12.8 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 CBH.
- 12.9 CBH shall maintain such quality management systems and procedures as are appropriate to enable CBH to ensure that the Services are always provided to the Contract Standard and CBH shall afford the Council full access to such systems and procedures for audit or other purposes.
- 12.10 CBH 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.
- 12.11 In addition to the agreed procedures for office opening and availability of staff set out in the Business Plans, CBH will ensure that in the event of any emergency or significant unforeseen difficulty occurring with respect to the delivery of the Services appropriate CBH 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.
- 12.12 CBH shall not, whether itself, 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.
- 12.13 CBH shall not permit its interests to interfere or conflict with its duty (which CBH hereby acknowledges) to provide the Services in the utmost good faith.

13 **Statutory requirements**

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

14 **Variations to tenancy agreements**

CBH 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 other than to include specific additional clauses that are felt necessary to restrain possible anti social behaviour.

15 **CBH's personnel and child protection**

- 15.1 CBH shall employ sufficient persons to ensure that the Services are provided at all times and in all respects in accordance with the Agreement.
- 15.2 CBH'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 CBH shall ensure that such persons are

properly and sufficiently instructed and supervised with regard to the provision of the Services.

15.3 If the circumstances under which the Services are provided are such that any personnel of CBH 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 CBH shall ensure that such 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.

15.4 The Council shall in no circumstances be liable either to CBH or to such personnel in respect of any cost, expenses, liability, loss or damage occasioned by any removal effected under clause 15.3.

15.5 **Child protection**

15.5.1 The government guidance 'Working Together to Safeguard Children 2006' and Section 11 of the Children Act 2004 places a duty on all Contractors who provide services for or work with children or young people, to safeguard and promote the welfare of children. CBH shall at all times comply with the requirements of Section 11 of the Children Act 2004 and the Child Protection Procedures set down by the Gloucestershire Safeguarding Children's Board (**GSCB**).

15.5.2 CBH shall at all times have their own arrangements (the **Arrangements**) in force for safeguarding and promoting the welfare of children which are compliant with GSCB Child Protection Procedures and the Contractor's duties in 'Working Together to Safeguard Children' and will ensure that any additional internal procedures or inter-agency protocols are consistent with these procedures.

15.5.3 CBH shall ensure:

- (a) All staff and volunteers (including temporary staff) are made aware of the CBH Arrangements;
- (b) Written policies exist that explicitly state 'clear priorities for safeguarding and promoting the welfare of children' and vulnerable adults in its policy documents and that they ensure the effective dissemination, and implementation, of these policies to staff and volunteers;
- (c) A clear line of accountability is prescribed within the organisation for work on safeguarding and promoting welfare and demonstrate a clear commitment to the importance of safeguarding and promoting welfare;
- (d) Staff and volunteers are subject to safe recruitment processes and checks, including a regular risk assessment of all posts to identify the potential risks to children and to the postholder and then to carry out conducting CRB and Independent Safeguarding Authority checks as appropriate;

- (e) Adherence to GSCB Procedures for dealing with allegations of abuse against members of staff and volunteers, including arrangements for notifying the Local Authority Designated Officer (**LADO**);
- (f) All staff and volunteers undertake appropriate training, and to ensure that this is kept up-to-date by refresher training at regular intervals;
- (g) The confidentiality of individuals is respected and adhere to GSCB Information Sharing and Assessment Protocol, which summarises local arrangements to work effectively with other organisations to safeguard and promote welfare, including arrangements for sharing information;’ (subject to any relevant provisions of the Data Protection Act 1998);
- (h) The implementation of appropriate whistle-blowing procedures, and a culture that enables issues about safeguarding and promoting the welfare of children to be addressed;
- (i) Accurate and up-to-date records are maintained of decision making and actions taken;
- (j) All staff and volunteers are sensitive to needs arising from race, culture, religion, sexual orientation or linguistic background;
- (k) Copies of records relating to any of the above can be provided to the Council’s Representative on reasonable request.

16 **Control and supervision of CBH's personnel**

- 16.1 CBH shall appoint a senior person as its representative (**CBH's Representative**) empowered to act on behalf of CBH for all purposes connected with the Agreement. Any notice, information, instruction or other communication given to CBH's Representative shall be deemed to have been given to CBH.
- 16.2 CBH shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of the person appointed as CBH's Representative and of any subsequent appointment.
- 16.3 CBH 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 CBH's Representative and when such deputy ceases to be so authorised.
- 16.4 CBH shall ensure that CBH's Representative, or a competent deputy, duly authorised by CBH to act on its behalf, is available to meet the Council's Representative at all reasonable times.
- 16.5 CBH shall provide and shall ensure that its personnel wear at all times, when engaged in the provision of the Services, appropriate identification, and shall ensure that when requested to do so any personnel of CBH shall disclose their identity and status as personnel of CBH.

17 **Use of assets**

- 17.1 CBH 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.
- 17.2 CBH shall be responsible for the maintenance and (where necessary) replacement of all Assets.
- 17.3 All Assets employed by CBH in the performance of the Services at any time must be either owned or hired by CBH 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 CBH 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.
- 17.4 CBH 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 CBH 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.
- 17.5 CBH 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.
- 17.6 CBH 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 CBH of its obligations under the Agreement.
- 17.7 At the expiry of the Term or upon termination of this Agreement (whichever shall first occur) the Council may serve a notice upon CBH requiring CBH to transfer to the Council or any other person or persons as may be specified in such notice (a) all Assets and materials used by CBH and (b) the benefit of all contracts or agreements relating to the hire of the Assets.
- 17.8 Upon receipt of a notice under clause 17.7 and if the Council so wishes CBH shall try to agree a value for such items with the Council and in default of such agreement the value shall be set at such figure as an Expert appointed pursuant to clause 60 shall determine to be a fair value for such items having regard to the condition and re-sale value thereof and disregarding any additional value they might otherwise be deemed to have as part of a going concern.
- 17.9 Upon receipt of a notice under clause 17.7 requiring CBH to transfer to the Council or any Council nominee the benefit of any contract or agreement for the hire of any Assets CBH shall forthwith execute all documents required to effect such transfer and shall deliver such Assets to the Council in such condition as it may be in at the date of the said notice.

18 **Contracts to be administered**

18.1 CBH shall act on behalf of the Council in administering the Contracts as from time to time detailed in the Memorandum of Operations and shall:

18.1.1 comply with all reasonable requirements of the Council in respect of any or all of the Contracts;

18.1.2 monitor and review the performance of those carrying out the Contracts;

18.1.3 take all proper steps (but not including legal action or proceedings unless so required expressly in writing by the Council) to enforce the Contracts;

18.1.4 at the request of the Council supply all information including copies of any documents to the Council;

18.1.5 liaise with the Council in respect of any renewal or re-letting of any of the Contracts.

19 **Assignment and sub-contracting etc**

19.1 CBH shall not:

19.1.1 assign the Agreement or any part thereof or the benefit or advantage of the Agreement or any part thereof;

19.1.2 sub-contract the provision of the Services or any part thereof to any person without the previous written consent of the Council's Representative and which if given shall not relieve CBH from any liability or obligation under the Agreement and CBH 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 CBH itself.

19.2 CBH shall ensure that any sub-contractor permitted to perform any part of the Services under clause 19.1.2. shall be fully supplied with all necessary information about this Agreement (including any relevant instructions given by the Council's Representative to CBH).

19.3 CBH shall not:

19.3.1 carry out work for or provide services to third parties (other than in accordance with this Agreement); or

19.3.2 establish a subsidiary;

(either or both being **New Business**)

without the Council's prior written consent (which shall not be unreasonably withheld or delayed) provided that the Council's consent under this clause 19.3 shall not be required where:

- (a) CBH is reasonably satisfied that the work or services to third parties or establishment of a subsidiary will not prevent CBH from complying with its obligations under this Agreement; and
- (b) the contracts under which such work or services are provided are not reasonably anticipated by CBH to have an annual turnover in excess of 5% of CBH's annual turnover in aggregate (or such other amounts as may be agreed between the parties from time to time) (or in the case of a subsidiary the annual turnover of the subsidiary shall not exceed 5% of CBH's annual turnover); and
- (c) CBH has informed the Council of its intention to carry out such work or service or establish the subsidiary.

provided that no ongoing consent shall be required once the New Business is incorporated in an Annual Plan or the CBH Business Plan.

20 Use of computer systems and software

- 20.1 The Council shall permit CBH to use for the purposes of providing the Services the Council's Computer Systems and/or Council's Software and/or Council's IT Infrastructure as set out in the Memorandum of Operations subject to such terms, conditions and stipulations as are set in the Memorandum of Operations and the agreed Service Level Agreement or as the Council may notify to CBH from time to time.
- 20.2 CBH shall use the Council's Computer Systems and/or Council's Software and/or Council's IT Infrastructure 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.
- 20.3 The Council will from time to time make available to CBH the technical specifications of the Council's Computer Systems and/or the Council's Software and/or Council's IT Infrastructure used by CBH.
- 20.4 Without prejudice to clause 20.9 CBH shall take all practicable steps to safeguard those parts of the Council's Computer Systems and the Council's Software and/or Council's IT Infrastructure under the control or influence of CBH against unauthorised access, tampering or systems failure.
- 20.5 The Council shall take all practicable steps to safeguard CBHs computer Systems utilising the Councils Systems/Software/Infrastructure, for the provision of the Services, against unauthorised access, tampering or systems failure.
- 20.6 If and to the extent that CBH 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 and/or Council's IT Infrastructure is necessary so to do CBH shall first obtain the written consent of the Council's Representative and if such consent is given it shall be a condition thereof that CBH shall:
 - 20.6.1 ensure that such other computer systems and/or software are compatible with the Council's Computer Systems and/or the Council's Software and/or Council's

IT Infrastructure and further will have no adverse affects on the Council's other computer systems and/or software and/or procedures;

20.6.2 ensure that any computer software it uses is properly licensed;

20.6.3 comply with all relevant requirements of any supplier of the Council's Computer systems and/or the Council's Software and/or Council's IT Infrastructure.

20.7 If at any time CBH believes that changes modifications or updating to the Council's Computer Systems and/or Council's Software and/or Council's IT Infrastructure 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 CBH 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:

20.7.1 all rights (including licences) in or arising from such changes shall become vested in the Council insofar as they relate to the Council's Computer Systems and/or Council's Software; and

20.7.2 the Council shall be entitled to require CBH 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 Business Plans.

20.8 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 CBH cease to use the Council's Computer Systems and/or the Council's Software and/or Council's IT Infrastructure and disconnect or otherwise separate CBH's own computer systems and/or software from the Council's Computer Systems and/or Council's Software and/or Council's IT Infrastructure. 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 Business Plans in accordance with clause 5 to reflect the cost of providing its own computer systems and software and IT infrastructure.

20.9 In the event of a failure of the Council's systems software or infrastructure affecting the data and/or systems and/or infrastructure used by CBH, the Council will inform CBH immediately it is aware of the failure, what it intends to do about the failure and give an estimate of when the systems software or infrastructure may be expected to work again. As soon as the system software or infrastructure is working again, the Council will inform CBH.

20.10 In the event of a failure of a Council system or systems affecting the data and/or systems used by CBH and/or affecting the Services provided by CBH, CBH will not be penalised by the Council in any way.

- 20.11 The Council will consult with CBH before amending or changing any systems which CBH use in providing the Services, either directly or indirectly, or which interface with any system that CBH use in providing the Services.
- 20.12 CBH 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.
- 20.13 CBH 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.
- 20.14 The Council shall respect any security policy of CBH.
- 20.15 On termination of this Agreement by expiry of time or otherwise CBH 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.

21 **Data**

- 21.1 Subject to the provisions of clauses 20 and 22 CBH shall be entitled to access such data and information as is stored on the Council's Computer Systems as set out in the Memorandum of Operations which CBH may require in order to provide the Services.
- 21.2 In addition to any requirements set out in the Business Plans CBH will ensure that the Council's data relating to the Services is kept up-to-date.
- 21.3 Without prejudice to clauses 20.4 and 20.9 and subject to clause 22 CBH 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.
- 21.4 Without prejudice to clause 20.5 and subject to clause 22 the Council shall take all practicable steps to safeguard CBH's data and information as is stored on the Council's Computer Systems against unauthorised access tampering or system failure.
- 21.5 CBH shall at all times ensure that where (following consent under clause 20.6) CBH is using CBH's own computer systems:
- 21.5.1 comprehensive security copies of any computerised Council Data are updated at the end of each Working Day in relation to that day and at least twice a week are stored in a secure location so as to enable CBH (or in the event of the default of CBH 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 CBH's own computer systems;

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

21.6 The Council shall at all times ensure that where CBH is using the Council's own computer systems and the Council is identified as being responsible for backup and recovery arrangements:

21.6.1 comprehensive security copies of any computerised Council Data are updated at the end of each Working Day in relation to that day and at least twice a week are stored in a secure location so as to enable CBH 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 Council's own computer systems and/or Council's IT Infrastructure;

21.6.2 adequate recovery arrangements exist to ensure that CBH can continue to comply without interruption with its remaining obligations under this Agreement in the event of a partial or complete failure of the Council's own computer systems or software and/or Council's IT Infrastructure.

22 **Data protection**

22.1 Without prejudice to clause 21 and subject to clause 20.15 CBH shall:

22.1.1 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 Agreement give rise to obligations under that Act;

22.1.2 provide the Council with such information as the Council may require to satisfy itself that CBH is complying with the obligations referred to in clause 22.1.1;

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

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

22.2 Neither party shall knowingly do anything which places the other in breach of its obligations under the Data Protection Act 1998.

23 **Confidentiality**

CBH shall not and shall ensure that its employees agents and subcontractors shall not divulge or dispose of or part with possession custody or control of any material or information provided to CBH by the Council pursuant to the Agreement or prepared or obtained by CBH pursuant to the Agreement where the Council has expressly identified

that information or material may be as required in order to fulfil the requirements of the management agreement only.

24 **Health and safety**

CBH 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 and of all other Acts, Regulations, Orders or rules of law pertaining to health and safety.

25 **Insurances**

25.1 CBH shall at all times maintain in force such policies of insurance as shall fully insure and indemnify CBH against its liability:

25.1.1 to the Council and any employee of the Council;

25.1.2 to the employees of CBH;

25.1.3 to any other person;

25.2 CBH 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 CBH, its employees or agents or any sub-contractor or person for whom the sub-contractor is responsible.

25.3 CBH shall maintain insurance to an unlimited sum in respect of personal injury to or the death of any person under a contract of service with CBH 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.

25.4 CBH shall maintain all other insurances as may be necessary or prudent for the performance of the Agreement.

25.5 CBH 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.

26 **Housing Inspection**

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

26.2 The Council shall afford CBH all reasonable assistance in order to enable CBH to comply with its obligations under clause 26.1.

27 **Provision of information**

27.1 Without prejudice to the other provisions of this Agreement CBH 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 CBH shall comply with that request as soon as possible.

27.2 Subject to clause 5.11 and 27.3 CBH 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.

27.3 CBH'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:

27.3.1 at least once a quarter to discuss operational issues;

27.3.2 at least once a quarter to discuss:

(a) the manner and extent of CBH's provision of the Services pursuant to this Agreement and the Business Plans (including the Annual Plans);

(b) financial and budgetary issues; and

(c) 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 CBH with reasonable prior notice thereof.

27.4 CBH 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 Business Plans 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.

27.5 CBH shall inform the Council's Representative as soon as is practicable 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:

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

27.5.2 any acts or omissions by the Council or such other persons as are referred to in clause 27.5.1 which prevent or hinder or are likely to prevent or hinder CBH from complying with its obligations under this Agreement;

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

27.6 CBH shall co-operate with all Council departments to enable them to perform better their functions and duties either by means of the provision of information or by such other appropriate means (but not involving out-of-pocket expenditure).

27.7 CBH 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.

27.8 CBH 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.

28 **Fraud Policy**

28.1 CBH shall be committed to promoting awareness of and compliance with the CBH Anti Fraud and Corruption Policy and Raising Concerns at Work Policy with all board members, staff and contractors to prevent, detect and respond to any irregularity, with the aim of recovering or minimising losses from fraudulent or corrupt activity and maintaining a culture of integrity.

28.2 CBH shall implement procedures for preventing, identifying and reporting potential money laundering activity as required by the Money Laundering Regulations 2007.

28.3 CBH shall

28.3.1 continue to participate, in partnership with the Council, in the Audit Commission's National Fraud Initiative (**NFI**), including the secure submission of data on payroll, pensions, creditors, rents, right to buy, insurance claims and any other data sets as required by the Audit Commission.

28.3.2 assist with the subsequent investigation of data matches, as requested by the Council's NFI key contact.

29 **Complaints**

29.1 CBH 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. CBH shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner.

29.2 CBH 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.

29.3 CBH shall comply with its own complaints policy as approved by the Council in the Business Plans.

30 **Legal investigations**

30.1 CBH immediately upon becoming aware of the same shall notify the Council's Representative of any accident, damage or breach of any statutory provision which affects

or might reasonably be expected to affect CBH's ability to comply with the Business Plans or deliver the Services in accordance with this Agreement.

30.2 If requested to do so by the Council's Representative, CBH 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.

30.3 Should any part of the Services involve CBH 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.

31 **Agency**

31.1 Neither CBH 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.

31.2 Neither CBH 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.

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

32 **Security**

32.1 CBH shall maintain and shall ensure that its personnel and all its visitors maintain the security of such of the Premises which it is licensed or permitted to use under clause 36 both when in use and when not in use.

32.2 CBH shall ensure that access to the Premises which it is permitted to use under clause 36 is restricted to its personnel and visitors engaged upon or in connection with the provision of the Services.

32.3 CBH shall comply with the Council's security regulations including any made for the purpose of the Data Protection Act 1998.

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

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

Part F – Responsibilities and rights of the Council

33 Failure to perform

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

34 Provision of information

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

35 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.

36 Use of premises

The Council shall make available to CBH the Premises as detailed from time to time in the Memorandum of Operations on the terms and conditions set out in the form of lease/licence set out in that document.

37 Audits

37.1 CBH 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:

37.1.1 immediate access to;

37.1.2 permission to copy and remove any copies of; and

37.1.3 permission to remove the originals of

any books, records and information in the possession or control of CBH 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 Data and any such information stored on a computer system operated by CBH.

37.2 CBH 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.

38 Services supplied by Council

The Council shall supply the services as described from time to time in the Memorandum of Operations on the terms set out therein.

39 **Intellectual property rights**

39.1 At the expiry or earlier termination of the Agreement, CBH 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.

39.2 Any and all intellectual property rights in any matter or thing developed under this Agreement or arising from the provision of the Services by CBH (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 CBH agrees that it shall execute or cause to be executed all deeds, documents and acts required to vest such intellectual property rights in the Council.

40 **Right to use documents**

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

40.2 At the expiry or earlier determination of the Agreement CBH 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.

41 **Right to use Premises**

41.1 CBH shall permit the Council to use any of the Premises at any time in the event of a declaration of a civil emergency or natural disaster by the Council and CBH shall give all necessary assistance including the provision of staff to the Council in arranging emergency use.

41.2 Without prejudice to the provisions of clause 41.1 CBH shall upon the occurrence of a civil emergency or natural disaster 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:

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

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

41.2.3 to co-ordinate and supervise the operation of the provision of temporary accommodation described in clause 41.2.1;

- 41.2.4 to set up and maintain arrangements for the reasonable protection of any property brought to any temporary accommodation by evacuees and to liaise with the police and other relevant bodies in relation to the safe custody of the same;
- 41.2.5 whenever so requested by the Council to arrange for the provision of temporary accommodation for homeless persons and/or evacuees;
- 41.2.6 to manage the temporary accommodation secured pursuant to these provisions for so long as the emergency lasts;
- 41.2.7 to produce monthly accounts to the Council itemising its reasonable costs incurred in the provision of the services detailed in this clause 41.2 such costs to be agreed between the parties (and thereupon treated as a variation of the Business Plans) and in default of such agreement the matter shall be referred to an Expert pursuant to the provisions of clause 60.

41.3 At the request of the Council CBH will attend such training sessions and/or exercises as may be specified by the Council and the number of CBH's employees who shall be required so to attend shall be agreed between the Council and CBH and in default of agreement the Council shall specify the number of CBH's employees to attend.

42 **Exclusion of liability**

42.1 The Council shall not be liable to CBH, 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 CBH of the Services or the use of or occupation by CBH 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.

42.2 The Council shall only be liable to CBH for any indirect or consequential loss irrespective of the cause or causes of such loss to a maximum value of £500,000 in any one year of the Term but subject in any event to a maximum of £25,000 in respect of any single claim made due to damage by a computer virus.

43 **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.

44 **Waiver**

Failure by the Council at any time to enforce the provisions of the Agreement or to require performance by CBH 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. No failure by either party to enforce any of the terms or conditions of this Agreement at any time or for any period will release or

exonerate or in any way affect the liability of the other party or be a waiver of those terms or the right of that party at anytime to enforce each and every term and condition of this Agreement or any penalty attached to their non-performance.

Part G – Financial arrangements and other matters

45 Financial arrangements

CBH shall comply with all the financial arrangements described in Schedule 3..

46 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, CBH 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 CBH on trust for the Council. If any such other monies are temporarily paid by CBH 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 shall be mixed with any other money. CBH 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.

47 Right to use surpluses

47.1 If in relation to the Services CBH out-performs the Business Plans then CBH shall be entitled to use at it absolute discretion any surpluses generated up to the **Maximum Sum**.

47.2 The Maximum Sum shall be 1% of CBH's annual turnover generated in relation to the Services.

47.3 Any surplus generated in relation to the Services in excess of the Maximum Sum shall be used in accordance with any scheme for surpluses forming part of the Business Plans or such other scheme for surpluses as may be agreed by the Council (such agreement not to be unreasonably withheld or delayed).

48 Interest on overdue payments

Save where payment is reasonably disputed by the Council and CBH 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 30 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 2% two per cent than the Bank of England 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.

49 Value Added Tax

All payments by either party hereto to the other party pursuant to the terms of this Agreement shall be exclusive of any Value Added Tax chargeable in respect of the supply of goods or services for which the payment is consideration and in so far as such payments fall to be made under this Agreement such Value Added Tax shall be added to

the amount thereof and paid in addition thereto upon production of a proper Value Added Tax invoice.

Part H – Employment and staffing

50 Employees

50.1 CBH shall notify the Council's Representative of any amendments in CBH's staffing structure during the Term.

50.2 The Council will in relation to those Employees who are members of the Local Government Pension Scheme upon demand make such payments to the Administering Authority as are necessary to ensure that the accrued benefits of the Transferred Employees whilst in the service of the Council or CBH are fully funded.

50.3 Until such payments under clause 50.2 are made the Council agrees to indemnify CBH against all costs, proceedings, liabilities and claims of whatever nature in respect of the Employees' membership of the Local Government Pension Scheme whilst in the service of the Council or CBH.

51 Information about employees

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

52 Right to representation

CBH 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 I – Monitoring and management

53 Meetings between Council and CBH

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

54 Council's Representative

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

54.2 The Council's Representative shall have power to issue instructions to CBH on any matter relating to the provision of the Services and CBH shall comply therewith. If any such instruction is a variation of the Business Plans under clause 5 or a variation under clause 57 it shall be subject to the terms thereof. **Provided that** any delay resulting does not affect the provision of the Services or the discharge of the Council's statutory duties CBH

shall be entitled to object to any such instructions which would have the effect of significantly varying the fundamental nature of the Services and the delivery thereof and such objection shall be referred to the Expert pursuant to clause 60.

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

Part J – Tenant Management Organisations

55 Tenant Management Organisations

- 55.1 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.

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

55.2.1 provision of information and records about the Services;

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

55.2.3 attendance at meetings of such tenants;

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

- 55.3 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 55.1 the Council may issue further instructions to CBH requiring CBH to make arrangements to transfer responsibility for the Services in respect of the Dwellings so affected to the Tenant Management Organisation in such manner and within such timescale as the Council may prescribe and CBH shall comply with such instructions which may include (but not be limited to):

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

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

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

55.3.4 establishing working arrangements with the Tenant Management Organisation;

- 55.3.5 providing any other assistance reasonably needed to enable such transfer to take place.
- 55.4 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 57 (giving three months notice to CBH) and where such a variation is made the amendment to the Business Plans in accordance with clause 57.3 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 58 shall apply).
- 55.5 CBH will assume all 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 vary this Agreement to reflect such agreement in accordance with clause 57.
- 55.6 In the event that a Tenant Management Organisation to which responsibility for managing the Services has been transferred in accordance with this clause 55 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 57 so as to require CBH to provide such ceased Services and where such a variation is effected a variation may also be made in relation to the current Business Plans in accordance with clause 57.3.
- 55.7 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.
- 55.8 CBH shall in complying with its obligations under this clause 55 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 K – Term

56 Duration and renewal

- 56.1 This Agreement shall expire on 31 March 2020 unless extended by the Council pursuant to the following provisions of this clause and subject to earlier termination as provided herein.
- 56.2 The Council shall be entitled (but without any obligation whatsoever) to extend the Term for one or more further periods of five years by giving notice to this effect to CBH no later than six calendar months before the date on which the Agreement would otherwise expire pursuant to clause 56.1.

Part L – Variations etc

57 Variations

- 57.1 The Council may from time to time either in consultation with or in response to representations from CBH 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 CBH and CBH shall be bound by any such Variations.

57.2 Reasonable notice for the purpose of clause 57.1 shall be not less than three months.

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

57.4 In the event that a Variation is effected by the Council which is not made in response to representations from CBH and which is likely to result in the redundancy of one or more Employees engaged in the provision of the Services CBH shall as soon as practicable:

57.4.1 identify the relevant Employee or Employees;

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

57.4.3 notify the Council of the same;

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

57.4.4 take account of the potential redundancy costs to be incurred by CBH as a result of the Variation in determining the variation to the Business Plans in accordance with clause 57.3; or (if the Council so determines)

57.4.5 meet the amount of the statutory redundancy entitlement of the relevant employee or employees;

provided that CBH shall have used its best endeavours to limit redundancy costs and the Council shall not be obliged to agree to a variation to the Business Plans which reflects the cost of more than the Council's minimum obligation in respect of redundancy payments under the Employment Rights Act 1996, the Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999 and the Local Government (Discretionary Payments) Regulations 1996.

57.5 CBH shall provide to the Council such information as the Council may require to enable it to reach a determination in accordance with clause 57.4.

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

57.7 In the event of a dispute as to how any Variation affects the Business Plans pursuant to this clause 57 the matter shall be decided by an Expert pursuant to clause 60.

58 **Termination etc.**

58.1 If CBH:

- 58.1.1 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or an administrative receiver;
- 58.1.2 has a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- 58.1.3 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- 58.1.4 has an administrator or an administrative receiver (as defined in the Insolvency Act 1986) appointed;
- 58.1.5 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;
- 58.1.6 is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator or an administrative receiver, or which entitle the court to make a winding-up order;

then in any such circumstances the Council may (if it so decides) exercise the rights described in clause 58.3.

58.2 If there is or has been any act, omission or failure by CBH, its employees, sub-contractors or agents in the performance of CBH'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, or if there has been a breach of this Agreement, then the Council shall be entitled (if it so wishes) to exercise the rights described in clause 58.3 or 59.

58.3 In the event of any one or more of the circumstances described in clauses 58.1 and 58.2 the Council may take any or all of the following actions; but, in the circumstances described in clause 58.2, shall use all reasonable endeavours to utilise its powers in clause 59 before using its powers under this clause 58.3:

- 58.3.1 either provide itself or procure the provision of the whole or the relevant part of the Services until such time as (if at all) CBH shall demonstrate to the satisfaction of the Council that the whole or such part of the Services will be once more provided by CBH in accordance with the provisions hereof;
- 58.3.2 without determining the whole of this Agreement terminate forthwith the relevant part of the Services only and thereafter itself provide or procure a third party to provide such part of the Services;
- 58.3.3 determine the whole of this Agreement;

and in the event of action pursuant to clauses 58.3.1 and 58.3.2 a corresponding variation to the Business Plans shall be made in accordance with clause 57.3.

58.4 If the Agreement is terminated in whole or in part as provided in clause 58.3 the Council shall:

- 58.4.1 be entitled to reoccupy any premises and repossess any other physical resources or assets licensed, loaned, or hired to CBH and to exercise a lien over any of the physical resources or any other thing belonging to CBH and shall have full and unfettered licence over all documents for use in connection with the Services;
- 58.4.2 be entitled to employ and pay other persons to provide and complete the provision of the Services or any part thereof and to use all such CBH's physical resources or other things, and all such documents for the purpose thereof.
- 58.5 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 58 and any other right or remedy available to it) to take (if it so wishes) any or all of the following actions:
- 58.5.1 serve notice on CBH to rectify the defect (where or when it is capable of rectification) within such time as the Council may direct;
- 58.5.2 carry out the relevant Services itself or by a third party and vary the Business Plans in accordance with clause 57.3 to reflect the Council's loss, cost and expense in so doing.
- 58.6 If the Council exercises its rights under this clause 58 to terminate the whole or any part of the Agreement then in relation to the whole or any such part CBH shall, unless the Council requests otherwise:
- 58.6.1 forthwith cease to perform any of the Services;
- 58.6.2 immediately hold all rent and other sums collected or obtained under this Agreement on trust for the Council notwithstanding any right of retention under clause 46;
- 58.6.3 hand over this Agreement to the Council without detriment to the interest of the Council's tenants or other customers of the Council.
- 58.7 The Council undertakes to exercise its power to appoint and remove board members pursuant to the Articles of Association of CBH only in any of the circumstances described in clauses 58.1 and 58.2 and then only for so long as (in the Council's reasonable opinion) the relevant circumstances subsist.

59 **Adverse regulatory inspections etc and Remedial Plans**

- 59.1 In the event of the occurrence of one or more of the circumstances described in clause 58.2 or in the event of the publication of a materially adverse inspection report by a Competent Authority (the **Event**) the Council shall prior to exercise of its powers under clause 58 (termination etc.) require CBH to produce a remedial plan (the **Remedial Plan**) within 20 Working Days or such other shorter period as the Council may reasonably require after the occurrence of the Event.

The Remedial Plan shall:

- (i) contain an analysis by CBH of the reasons why the Event occurred;
- (ii) set out what steps CBH proposes to take to deal with the Event and/or establish appropriate improvement targets and timeframes;
- (iii) set out what steps CBH proposes to take to avoid a recurrence of the Event;
- (iv) in relation to the circumstances in clause 58.2 identify what action CBH proposes to take to provide the Services in accordance with the requirements of this Agreement.

The Council shall notify CBH within 20 Working Days of receipt of the Remedial Plan whether it is agreed or rejected.

59.2 If the Council rejects a Remedial Plan proposed by CBH the Council shall give reasons. In these circumstances CBH shall within a further ten Working Days propose a revised Remedial Plan taking account of the Council's reason for rejection and any amendments proposed by the Council. The Council will then decide whether to accept or reject the revised Remedial Plan and in the absence of agreement between the parties the matter shall be determined in accordance with clause 60.

59.3 If (i) the Event leading to the production of the Remedial Plan recurs within three months of the implementation of the Remedial Plan or (ii) the Services do not improve in accordance with any agreed improvement target confirmed in the Remedial Plan or (iii) the Council has rejected a Remedial Plan in accordance with clause 59.1 and no suitable Remedial Plan is subsequently submitted and approved by the Council then the Council will be entitled to exercise the rights described in clause 58.

60 **Dispute resolution**

60.1 All disputes between CBH and the Council arising out of or in connection with this Agreement or the performance of the Services by CBH or any failure by the parties to agree any matter to be agreed as referred to in this Agreement within a reasonable period shall be referred to an expert to be agreed upon by the parties or in default of such agreement to be nominated by the President for the time being of the Chartered Institute of Housing or a person appointed by him.

60.2 The Expert appointed under clause 60.1 shall be entitled to make such decision or award as they think 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 they in their absolute discretion thinks fit.

60.3 Any award of costs under clause 60.1 shall be reflected in a variation to the current Business Plans.

60.4 Any award or decision of the Expert under this clause shall be final and binding on both parties save in the event of fraud or a mistake in law or material fact.

60.5 Until such time as a dispute between CBH and the Council is resolved CBH shall continue to perform the Services in accordance with this Agreement.

Part M – Notices and other matters

61 Notices

61.1 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.

61.2 Notices served under clause 61.1 shall be sent by first class recorded delivery mail (or equivalent). All other notices shall be sent by such means as the sending party deems appropriate.

62 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.

63 Partnerships

Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties hereto and save as expressly provided nothing in this Agreement shall be deemed to make CBH the agent of the Council or authorise CBH (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.

64 Survival of this contract

64.1 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.

64.2 Insofar as any of the obligations of CBH 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.

65 Law

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

66 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.

67 **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.

68 **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.

Part N – Terms used etc

69 **Definitions and interpretation**

69.1 The definitions are as follows:

Agreement means this Agreement (including the Schedules and the Memorandum of Operations) and any variations in accordance with clause 57.

Annual Plan means the performance plan forming part of the Business Plans which is to be produced annually by CBH and which is described in clause 5.

Business Plans means the document comprising the Housing Revenue Account business plan and the CBH Business Plan which shall comply with Clause 1.3 and shall include any variations of such document made pursuant to clause 57.3.

CBH's Business Plan means the business plan for CBH as settled from time to time in accordance with clause 5.

CBH's Representative means the person who is to represent CBH appointed pursuant to clause 16.1.

Commencement Date means 1 April 2003.

Competent Authority means the Audit Commission, the Office for Tenants and Social Landlords (as defined in the Housing and Regeneration Act 2008, known as the Tenant Services Authority or TSA) and any other government sponsored body having regulatory jurisdiction over CBH.

Contract Standard means the standard to which the Services are to be provided as defined in clause 12.1.

Contracts means the contracts for goods and/or services relating to the Services detailed in the Memorandum of Operations and any replacements thereof or additions thereto as notified by the Council to CBH.

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 provision of the Services.

Council 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 Managing Director of the Council or such other individual as the Council may appoint from time to time.

Council's Representative means the person nominated pursuant to clause 54.

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

Dwelling means any leasehold or tenanted dwelling house to be managed by CBH 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 Memorandum of Operations shall be excluded), (b) any land, gardens, outhouses, private paths or driveways usually enjoyed with any such dwelling house and (c) group homes for sheltered accommodation provided under the Enabling Acts **together with** any land, gardens or driveways usually enjoyed with any such sheltered accommodation.

Employees means the employees employed by CBH from time to time.

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

Expert means an individual appointed in accordance with clause 60.

Housing Revenue Account means the Council's housing revenue account.

Premises means the offices and other premises described in the Memorandum of Operations.

Management Fee means the fee received by CBH from the Council for rent collection as agreed between the parties as part of the settlement of the Annual Plans.

Memorandum of Operations means the document agreed between the parties from time to time (and signed by the parties by way of identification) detailing the operational aspects of the working relationship contemplated by this Agreement and including (but not limited to) details of the Council's premises used by CBH, the Council's IT infrastructure and computer systems used by CBH, the service level agreements agreed between the parties and the Council's contracts administered by CBH.

Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

RPI means the United Kingdom General Index of Retail Prices (All Items) or in the event that the basis of calculation of such Index shall change or if such Index ceases to be

published (as to which the Council's reasonable decision shall be conclusive) such other published index of retail prices or the value of money as the Council and CBH may agree **provided that** in the event that such agreement cannot be reached within 21 Working Days of a decision by the Council the RPI shall be determined by an Expert in accordance with the provisions of clause 60.

Services means the services to be provided by CBH in accordance with the Agreement and includes any variations thereto made pursuant to clause 57.

Standing Orders and Financial Regulations means the Council's documented orders and regulations which must be complied with by CBH to the extent that they apply to the subject matter of this Agreement.

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

Term means the period commencing on the Commencement Date and expiring on 31 March 2020 subject to any extension under clause 56.2 or earlier termination as herein provided.

Working Day means any day between the hours of 9 am and 5 pm 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 pm shall mean the following Working Day.

- 69.2 Reference to CBH's personnel shall be deemed to include CBH's directors and employees and CBH's agents, sub-contractors and essential visitors (as referred to in clause 32.2) unless the context otherwise requires.
- 69.3 The Agreement shall be governed by and construed in accordance with English Law, and the English courts shall have jurisdiction over any dispute or difference which shall arise between the Council or the Council's Representative and CBH out of or in connection with the Agreement save as otherwise provided in clause 60.
- 69.4 A reference to the Enabling Acts or any other Act of Parliament, or to any Order, Regulation, Statutory Instrument, or the like, shall be deemed to include a reference to any amendment, re-enactment, consolidation, variation, replacement or extension of the same respectively from time to time and for the time being in force.
- 69.5 Words denoting the singular shall include the plural and vice versa and words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include firms and corporations.
- 69.6 References to clauses, Schedules and Annexes shall be deemed to be references to the clauses in and the Schedules and Annexes to this Agreement as so numbered.
- 69.7 In this Agreement headings are included for ease of reference only and shall not affect this Agreement or the interpretation thereof.

This deed has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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

THE COMMON SEAL of **CHELTENHAM**)
BOROUGH HOMES LIMITED was hereunto)
affixed in the presence of:)

SCHEDULE 1 TO THE MANAGEMENT AGREEMENT

Format of the Business Plans and the Annual Plans

The HRA Business Plan shall include, but not be limited to, the following sections to be revised as jointly agreed:

- Aims and objectives
- Alignment with other CBC strategies and plans
- Asset management strategy
- Investment and maintenance programmes
- Service delivery standards
- Tenant and leaseholder consultation
- Forecast of available resources
- Assumptions used in the plan

The CBH Business Plan shall include, but not be limited to, the following sections to be revised as jointly agreed:

- Aims and objectives
- Assessment of operating environment
- Business assessment
- Service delivery proposals
- Proposals for achieving Value for Money
- Financial forecasts
- Assumptions used in the plan
- Scheme for use of surpluses

The Annual Plan shall include, but not be limited to, the following sections to be revised as jointly agreed:

- CBH annual budget
- Key business activities for the year
- Performance targets for the year
- Value for Money action plan

SCHEDULE 2 TO THE MANAGEMENT AGREEMENT DELEGATION OF FUNCTIONS

Housing management responsibilities delegated to Cheltenham Borough Homes

1. Service Delivery

1.1 New Tenancies

- 1.1.1 Making the best use of housing stock to reduce under occupation
- 1.1.2 Selection of tenants for vacant properties
- 1.1.3 Notification to and signing of new tenants
- 1.1.4 Granting of new tenancies
- 1.1.5 Successions
- 1.1.6 Mutual Exchange management
- 1.1.7 Initial assessment of transfer applications
- 1.1.8 "Homes" (in relation to CBC tenants)

1.2 Responsive Repairs and Maintenance

- 1.2.1 Undertaking responsive repairs
- 1.2.2 Undertaking planned maintenance
- 1.2.3 Improving the energy efficiency of council dwellings
- 1.2.4 Inspection repairs and maintenance work
- 1.2.5 Fulfilling commissioning and client functions in respect of such work contracted externally

1.3. Empty Property Management

- 1.3.1 Terminations
- 1.3.2 Inspection and repairs
- 1.3.3 Major repairs

1.4 Tenancy Management

- 1.4.1 Estate Management
- 1.4.2 Enforcement of tenancy conditions (to include court action and evictions) in cases that include anti social behaviour, and other actions to control anti social behaviour by, or that affects, Council tenants (including actions under s.152 Housing Act 1996)
- 1.4.3 Taking steps leading to evictions and court action by the Council to support enforcement
- 1.4.4 Applications to suspend possession orders and warrants of possession
- 1.4.5 Advise the Council and consult tenants in relation to alterations to Conditions of Tenancy
- 1.4.6 Illegal occupation
- 1.4.7 On the instructions of Cheltenham Borough Council's Community Safety Officer, applications for Anti Social Behaviour Orders
- 1.4.8 Administration of disturbance payments as a result of works
- 1.4.9 Administration of the tenants insurance scheme
- 1.4.10 Production and upkeep of the Tenants' Handbook

1.5 Estate Management

- 1.5.1 Caretaking and cleansing
- 1.5.2 Grass cutting and grounds maintenance to HRA land

1.6 Supported Housing

- 1.6.1 Sheltered Housing schemes
- 1.6.2 Housing Support Assistants supporting tenants in sheltered council housing

1.7 Clearance and Disposal of Council Dwellings

- 1.7.1 In partnership with the Council, consultation on, and development of, clearance schemes
- 1.7.2 Decanting tenants

1.8 Procurement

- 1.8.1 Establishment of a procurement policy for CBH consistent with Best Value
- 1.8.2 Commissioning, letting and administration of contracts in relation to delegated activities

1.9 Tenant Involvement

- 1.9.1 Production of Tenant Compacts
- 1.9.2 Provision of information to tenants newsletters
- 1.9.3 Production of reports to tenants and newsletters
- 1.9.4 Support for the Neighbourhood Monitoring panels
- 1.9.5 Support for local residents associations

1.10 Management of Other HRA Assets

- 1.10.1 Managing shared ownership properties
- 1.10.2 Managing leasehold properties
- 1.10.3 Enforcement of leasehold conditions
- 1.10.4 Managing estate garages
- 1.10.5 Management of area offices
- 1.10.6 Provision of information on these assets for inclusion in the Council's Corporate Asset Management Plan

1.11 Enquiries and Complaints

- 1.11.1 Responding to enquiries concerning ALMO services
- 1.11.2 Management of complaints concerning ALMO services, including Ombudsman complaints

2. Business Development and Performance Management

- 2.1 Produce and update annually a Delivery Plan
- 2.2 Conduct Best Value reviews as proposed in the Delivery Plan
- 2.3 Consider and agree proposals arising from Best Value reviews
- 2.4 Implement improvement plans arising from Best Value reviews incorporating targets into this plan
- 2.5 Provide the Council with information to enable it to make statistical and financial returns
- 2.6 Prepare an HRA Business Plan covering the Council's stock
- 2.7 Identify sources of tenant satisfaction and dissatisfaction
- 2.8 Research into the views, aspirations, and preferences of tenants
- 2.9 Involve tenants in business planning, Best Value reviews and performance monitoring

- 2.10 Agreement and monitoring of Service Level Agreements for the provision of goods and services

3. Finance

- 3.1 Maintaining financial accounts
- 3.2 Preparation of an annual revenue budget for agreement with the Council
- 3.3 Managing and controlling this budget
- 3.4 Rent collection
- 3.5 Producing and reviewing a 10 year rent restructuring plan
- 3.6 Preparation of capital finance bids for consideration and submission by the Council
- 3.7 Preparation of an annual capital investment cashflow forecast for agreement with the Council
- 3.8 Preparation of management accounts and capital cashflow statements
- 3.9 Acting as a designated office for housing benefit purposes
- 3.10 Collecting information from housing benefit claimants to support their claim
- 3.11 Raising of debtors and the recovery of arrears and other charges
- 3.12 Ordering, invoicing and payment for goods and services
- 3.13 Maintenance of a scheme of delegated authorities, authorised signatories and associated procedures

4. Capital Programme

- 4.1 Procurement and maintenance of stock condition survey data
- 4.2 Analysis of stock condition data
- 4.3 Preparation of capital finance bids for consideration by the Council and external funding bodies
- 4.4 Compiling long term maintenance strategies and publication and circulation of the annual planned programme
- 4.5 Preparing and consulting with tenants on proposed programmes of work
- 4.6 In partnership with CBC, keep under review the best use of housing stock/land and prepare any associated clearance plans
- 4.7 Arranging public sector clearance and demolition subject to agreement with the Council
- 4.8 Liaison with tenants for work to be carried out
- 4.9 Carry out all commissioning and client functions in respect of works and maintenance contracts covering Council housing
- 4.10 Providing aids and adaptations to tenants homes

5. Resourcing

- 5.1 Honouring undertakings given to Council staff transferring to its employment
- 5.2 Arranging for staff membership of the Local Government Pension Scheme
- 5.3 Employment of staff
- 5.4 Establishing and reviewing as necessary staffing structures to achieve Best Value objectives
- 5.5 Arranging for the provision of business, finance, payroll, administration, IT, personnel, staffing and other support services
- 5.6 Undertaking Best Value reviews in respect of support services, whether directly undertaken or purchased from the Council or externally, as part of its programme of Best Value

5.7 Operating premises for use in delivering these functions

6. Other Elements

- 6.1 Undertaking of contract services for maintenance on Public Buildings
- 6.2 Undertaking of contract services for maintenance on a specific contract with Gloucester Housing Association
- 6.3 Initial processing of RTB applications

SCHEDULE 3 TO THE MANAGEMENT AGREEMENT

FINANCIAL ARRANGEMENTS

This schedule sets out the arrangements for:-

- the management of the Council's Housing Revenue Account by CBH
- financial transactions between the Council and CBH in respect of the delegated services

Financial management of the Housing Revenue Account (HRA)

CBH shall ensure that appropriately trained staff, as approved by the Chief Finance Officer, are employed at all times to undertake all HRA financial management responsibilities detailed in this schedule. CBH will be responsible for the preparation and safe storage of all relevant working papers which will be available to the Chief Finance Officer on request.

HRA Business Plan

CBH shall prepare the HRA Business Plan including all financial forecasting. The Initial Business Plan is to be prepared prior to 31st March 2010 and will be updated annually thereafter to reflect changes to financial forecasts and performance achievements. The Business Plan will be subjected to a material review every five years unless there are significant events which necessitate an earlier review.

HRA Annual Budgets – Preparation and Monitoring

CBH shall prepare the draft and final HRA Annual Revenue Budget and Capital Programme in consultation and partnership with the Council's Financial Services Division and in accordance with the timetable determined by the Chief Finance Officer. Appropriate CBH staff will attend meetings as required by the Council to provide further information as is necessary. This will include analysis and advice on HRA Subsidy Determinations. Following Council approval of the annual budgets CBH will monitor subsequent income and expenditure against the approved budget and provide such reports as required by the Chief Finance Officer.

HRA Subsidy Claims

CBH shall prepare all HRA Subsidy claims for review and approval by the Chief Finance Officer in accordance with the timetable prescribed by the Department for Communities and Local Government. For any claims that are subject to audit, CBH will be the point of contact for the Council's auditors and shall provide all information and resolve all queries relating to the claims.

HRA Final Accounts

CBH shall prepare the HRA Final Revenue and Capital Accounts in accordance with the timetable determined by the Chief Finance Officer. Appropriate CBH staff will attend meetings as required by the Council to provide further information as is necessary. CBH will be the point of contact for the Council's auditors and shall provide all information and resolve all queries relating to the accounts.

Financial transactions between the Council and CBH in respect of the delegated services

CBH Management Fees

CBH shall invoice the Council on a quarterly basis for management fees in accordance with the sum approved in the Annual Plan for the year

HRA Repairs

CBH shall invoice the Council for all completed repair works on a monthly basis supported by a schedule detailing the costs on each job. The works will be charged on a cost only basis.

Cash Settlement

CBH shall make periodic requests for interim payment on account as required. These requests shall reflect sums currently outstanding between CBH and the Council.