

Tenancy Deposit Scheme for Lettings Agents and Corporate Landlords Membership Rules

11th Edition

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Rules of Membership for the Tenancy Deposit Scheme for Lettings Agents and Corporate Landlords

This edition of the Rules (effective from 1 April 2017) applies to:

- Lettings Agents and Corporate Landlords joining or renewing their Membership of the Scheme on or after 1 April 2017; and
- Deposits for all residential tenancies which are protected in this Scheme on the 1 April 2017.

Definitions

In these Rules, certain words and phrases have a special meaning. These words or phrases are indicated by using initial capital letters, and their meaning in the context of these Rules is set out below. Definitions given in these Rules in the singular shall, where the context allows, include the plural meaning and vice versa.

1988 Act means the Housing Act 1988, in which the statutory requirements for ASTs are contained, and any statutory amendments to it, and secondary legislation made under it.

2004 Act means the Housing Act 2004, in which the statutory requirements for Deposit protection are contained, and any statutory amendments to it and secondary legislation made under it.

Adjudication means a decision about a Dispute made by the Adjudicator.

Adjudication Rules means the Rules for the Independent Resolution of Tenancy Deposit Disputes (as published by TDS from time to time).

Adjudicator means a person appointed by TDS to resolve Disputes.

ADR means alternative dispute resolution (e.g. negotiation, mediation, adjudication) provided by TDS to facilitate the resolution of Disputes as an alternative to court proceedings.

Agent or **Lettings Agent** means an individual or company appointed by an owner to let or manage property on his behalf.

Annual Subscription Period means a 12 month period of Membership of the Scheme.

Approved Body means a professional body, accreditation scheme, trade association or similar body which has been approved by TDS and the Insurer for the purposes of these Rules.

Assured Shorthold Tenancy or **AST** means an assured shorthold tenancy as defined in the 1988 Act (as amended) and is the usual form of letting for a private tenant renting from a private landlord; where the tenancy began on or after 15 January 1989; the annual rent does not exceed £100,000; the house or flat is let as separate accommodation; and is the tenant's main home. A **Non-AST** means a tenancy that is not an Assured Shorthold Tenancy. An AST may be for a fixed term or it may be a periodic tenancy.

Bonding or **Bonded** means that the Member has arranged and maintains, usually through an Approved Body, Client Money protection insurance which will reimburse a member of the public in the event of fraudulent or dishonest misappropriation of that person's money; and that the extent of cover meets the minimum criteria set from time to time by TDS.

Calendar Day or **day** means any day of the year, including Saturdays, Sundays and bank holidays.

Client Account means an account set up in a UK bank, building society or other financial institution in the UK specifically to hold Client Money. The financial institution operating the account must not be entitled to make withdrawals from the account or levy charges against the account if the account holder owes money to that institution or fails to comply with the terms and conditions applicable to the account or is in some other way in default. The Deposit holder must not keep any of its own money in a Client Account or use money from a Client Account for its own purposes.

Client Money means money retained by a Member on behalf of its clients or Tenants or which cannot properly be said to belong to the Member for its own use and benefit.

Company means a company limited by shares and registered in the UK (including a public limited company), unless it appears in the expression “company limited by guarantee”.

Corporate Landlord means a Landlord Protecting or intending to Protect more than £100,000 of Deposits with the Scheme at any one point in time.

Department means the Department for Communities and Local Government (DCLG), or any other government department which from time to time is responsible for overseeing Deposit protection schemes.

Deposit or **Tenancy Deposit** means a sum of money which a Landlord requires a Tenant to pay at the start of the tenancy or which the Landlord holds over from a previous tenancy with the same Tenant. The money is security in case the Tenant does not meet their obligations in connection with the tenancy.

Dispute means a dispute at the end of an AST about the allocation of a Deposit Protected in the Scheme.

Disputed Amount means that sum of the Deposit over which the Landlord and Tenant cannot reach agreement at the end of a tenancy.

Fixed Term Tenancy means a tenancy with a specific start and end date stated in the tenancy agreement.

An **Insolvency Event** occurs if:

- a) the Member admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- b) the Member begins negotiations with creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Member; or
- d) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Member; or

- e) a floating charge holder over the Member's assets has become entitled to appoint or has appointed an administrative receiver; or
- f) a person becomes entitled to appoint a receiver, or a receiver is appointed, over the Member's assets; or
- g) the Member, being an individual, (or, in the case of more than one individual operating other than in a partnership, any one of them) is the subject of a bankruptcy petition or order; or
- h) a creditor or encumbrancer of the Member attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Member's assets and such attachment or process is not discharged within 14 days; or
- i) the Member suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- j) the Member, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation and reasonably suitable arrangements for continuation of the Member's business are not put in place within 14 days of the death or incapacitating event.

Where a change is made for the sole purpose of arranging a solvent amalgamation of the Member with one or more other companies or individuals or the solvent reconstruction of the Member, it shall not be an Insolvency Event.

Insurer means the insurer or insurance broker appointed by TDS from time to time to arrange the insurance cover required to operate the Scheme under paragraph 5(3) of schedule 10 of the 2004 Act.

Joint Tenancy means a tenancy with two or more Tenants, each of whom is jointly and severally liable for the performance of the obligations in, and the discharge of liabilities under or in connection with a tenancy. **Joint Tenants** means each and all the Tenants in a Joint Tenancy.

Landlord means an individual or individuals, or a **Corporate Landlord**, who own(s) an interest in and let(s) residential property. Reference to a Landlord includes a reference to any person (including an Agent) acting on a Landlord's behalf in relation to a tenancy. Reference to a Landlord also includes any one or more joint Landlords. Irrespective of the terms of any partnership agreement, declaration of trust or other arrangement between joint Landlords, TDS will regard all Landlords of a tenancy as being jointly and severally liable for the Landlord's obligations and will treat the authority of any one or more joint Landlords as binding on the others.

Let Only tenancy means an AST where a Member introduced the Tenant to the property, but the property is not managed by the Member. Let Only tenancies will include situations where a Member has registered the Deposit on the TDS tenancy database but does not fully manage the tenancy. For the purposes of these Rules a Let Only tenancy is one which has been designated as such by a Lettings Agent on the TDS tenancy database.

Member means an Agent or Landlord who has joined, and is a current Member of, the Scheme and **Membership** shall mean the state of being a Member, or the Members of the Scheme as a whole, as the context requires.

Membership Subscription is the fee payable to TDS by an Agent or Landlord for Membership of the Scheme for the Annual Subscription Period.

Membership Termination Notice means Notice served by TDS on a Member (with a copy to all affected Tenants) identifying the Deposit in question, confirming the date when Membership of the Scheme will end, and reminding the Member of their obligation to re-protect the Deposit before the Deposit ceases to be Protected by TDS.

Non-AST see Assured Shorthold Tenancy.

Notice means written Notice, sent by ordinary first class post or an equivalent service that offers next day delivery in the majority of cases, to the postal address supplied by the relevant party. **Notify** shall mean the giving of Notice and **Notification** shall be interpreted accordingly.

Prescribed Information means such information as a Landlord is required to provide to a Tenant and any Relevant Person, in accordance with the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 (Statutory Instrument 2007 No 797 available to view at www.legislation.gov.uk) or such other information as may be prescribed from time to time pursuant to section 213(5) of the 2004 Act.

Protect means register with the Scheme and remain for the time being entitled to the Scheme's benefits of insurance protection and access to the ADR process. **Protection, Protecting and Protected** shall be construed accordingly.

Private Rented Sector or **PRS** means the industry concerned with the letting of residential property owned by landlords who are not registered social landlords or local authorities or other bodies precluded from granting ASTs.

Relevant Obligation means the duty on a Member to comply with a direction given by TDS under paragraph 5(2) of Schedule 10 of the 2004 Act (as amended by article 4 of the Housing (Tenancy Deposit Schemes) Order 2007 (Statutory Instrument 2007 No 796)) or any obligation under the Scheme which is specified in these Rules as a Relevant Obligation for the purposes of paragraph 5(7) of Schedule 10 of the 2004 Act (as amended) (see Rule 12). If a Member does not fulfil a Relevant Obligation (e.g. paying the Membership Subscription on time) then the TDS has the power to terminate their Membership, or cease Protection of the Deposits which the Member has registered with the Scheme. (The 2004 Act and statutory instruments are available to view and download free of charge from www.legislation.gov.uk).

Relevant Person means any person who paid the Deposit or any part of it on behalf of a Tenant.

Renewed AST means a second or subsequent AST where the immediately preceding AST was a letting of the same or substantially the same property to the same Tenant (or to one or more persons who were previously one or more of the Joint Tenants of the immediately preceding AST) whether or not the property is let by the same Landlord, and whether or not the property is let on different terms and conditions. References to a Renewed AST shall include references to any contractual extension of an AST, and to any Statutory Periodic Tenancy where there is a material change in the terms from the Fixed Term Tenancy (e.g. change in Tenant, change in amount of Deposit), but shall not include a Statutory Periodic Tenancy where the terms are in all material respects the same as those under the Fixed Term Tenancy.

Rule means any Rule published by The Dispute Service Ltd in relation to the operation of the Scheme. **Rules** includes these Rules and the Adjudication Rules.

Scheme or Statutory Scheme or Tenancy Deposit Scheme means any one (and, as the context requires, each and all) of the schemes run by TDS (set up in accordance with the 2004 Act and operated under a service concession agreement with the Department) for the Protection of Deposits and the resolution of Disputes about their allocation at the end of a tenancy. In these rules **this Scheme** means TDS' Tenancy Deposit Scheme for Lettings Agents and Corporate Landlords.

Scheme Leaflet refers to the information booklet about the Scheme published by TDS from time to time. The Scheme Leaflet is part of the Prescribed Information.

Stakeholder means any person or body who holds the Deposit at any time from the moment it has been paid by the Tenant until allocated and paid as agreed by the parties to the AST, or as ordered by the court, or as directed by an Adjudicator.

Statutory Periodic Tenancy means an AST which arises by virtue of section 5 of the 1988 Act after the end of a Fixed Term Tenancy. A Statutory Periodic Tenancy shall not arise if, on the coming to an end of the Fixed Term Tenancy, the Tenant is entitled, by virtue of the grant of another tenancy, to possession of the same or substantially the same property as was let under the Fixed Term Tenancy. For the purposes of these Rules where there is a material change in the terms of a periodic tenancy from the terms that applied during the Fixed Term Tenancy (e.g. change in Tenant, change in amount of Deposit) the periodic tenancy shall be treated as a Renewed AST. A Statutory Periodic Tenancy where there is no material change from the terms that applied during the Fixed Term Tenancy is, by law, a new tenancy but for the purposes of these Rules it will not be treated as a Renewed AST.

Statutory Time Limit means the time limit as set out in the 2004 Act (as amended) in which Deposits must be protected, initial requirements of the Scheme must be met, and Prescribed Information must be provided to the Tenant and any Relevant Person. For the purposes of these Rules, the Statutory Time Limit shall begin on the day the Member receives the Deposit (whether or not in cleared funds) or is deemed to have received a Deposit. Examples of when a Member may be deemed to have received a Deposit are given in the document ***Operational Procedures and Advice for Members***.

TDS, TDS Ltd or The Dispute Service means The Dispute Service Limited, a company limited by guarantee registered in England and Wales with registered number 4851694.

Tenancy Deposit Protection Certificate means a certificate issued by TDS providing details of a Protected Deposit.

Tenancy Deposit Protection Charge means the fee set by TDS from time to time for Protecting an individual Deposit in the Scheme. The Rules stipulate the circumstances in which a Tenancy Deposit Protection Charge must be paid.

Tenancy Deposit Scheme has the same meaning as Scheme or Statutory Scheme (see above).

Tenant means one or more individuals who holds or possesses property under an AST. The expression **Tenant** includes Joint Tenants and former Tenants by whom a Deposit was paid.

VAT means value added tax.

Working Day means a day that is neither a Saturday or Sunday, nor any day that is a bank holiday under the Banking and Financial Dealings Act 1971 nor a customary or public holiday in England and Wales.

We/Us/Our means TDS.

Write, Writing and **Written** include electronic communications within the meaning of Section 15 (general interpretation) of the Electronic Communications Act 1971.

1 Application for Membership

- 1.1** Any Letting Agent or Corporate Landlord with tenancies in England and Wales may apply for Membership. A Landlord who is not a Corporate Landlord is not eligible for this Scheme, but may apply to TDS to join the Tenancy Deposit Scheme for Landlords.
- 1.2** Prospective Members must complete and submit an application form, providing information about their business, to enable TDS and the Insurer to decide:
 - 1.2.1** whether they can be accepted as Members; and
 - 1.2.2** what their annual Membership Subscription will be.
- 1.3** Application forms are available from the TDS website. The completed application form can be submitted by post or email.
- 1.4** TDS may ask the Member or other sources (such as an Approved Body) for additional relevant information before deciding whether to accept an application for Membership.
- 1.5** TDS may, at the applicant's expense, carry out an audit of a Member or prospective Member if TDS reasonably considers that this is necessary.
- 1.6** Membership will be refused or terminated if information supplied as part of an application proves to be false or misleading in any material respect.
- 1.7** Applications are considered on an individual basis. Membership will only be given if the application is accepted by the Insurer.
- 1.8** The Insurer's estimate of risk will determine the Membership Subscription to be paid by a successful applicant. The Insurer's decision on such matters is final and may be subject to change during any Annual Subscription Period or on an application for renewal of Membership.
- 1.9** To become a Member, applicants must:
 - 1.9.1** have a Client Account;
 - 1.9.2** be accepted by the Insurer OR belong to an Approved Body; and
 - 1.9.3** pay the required Membership Subscription to TDS when it is due;
 - 1.9.4** agree to abide by the Rules of this Scheme; and
 - 1.9.5** agree to comply with the Adjudication Rules.
- 1.10** TDS may, at its discretion, reject applications to join or renew Membership of this Scheme. The decision of TDS on such matters is final.

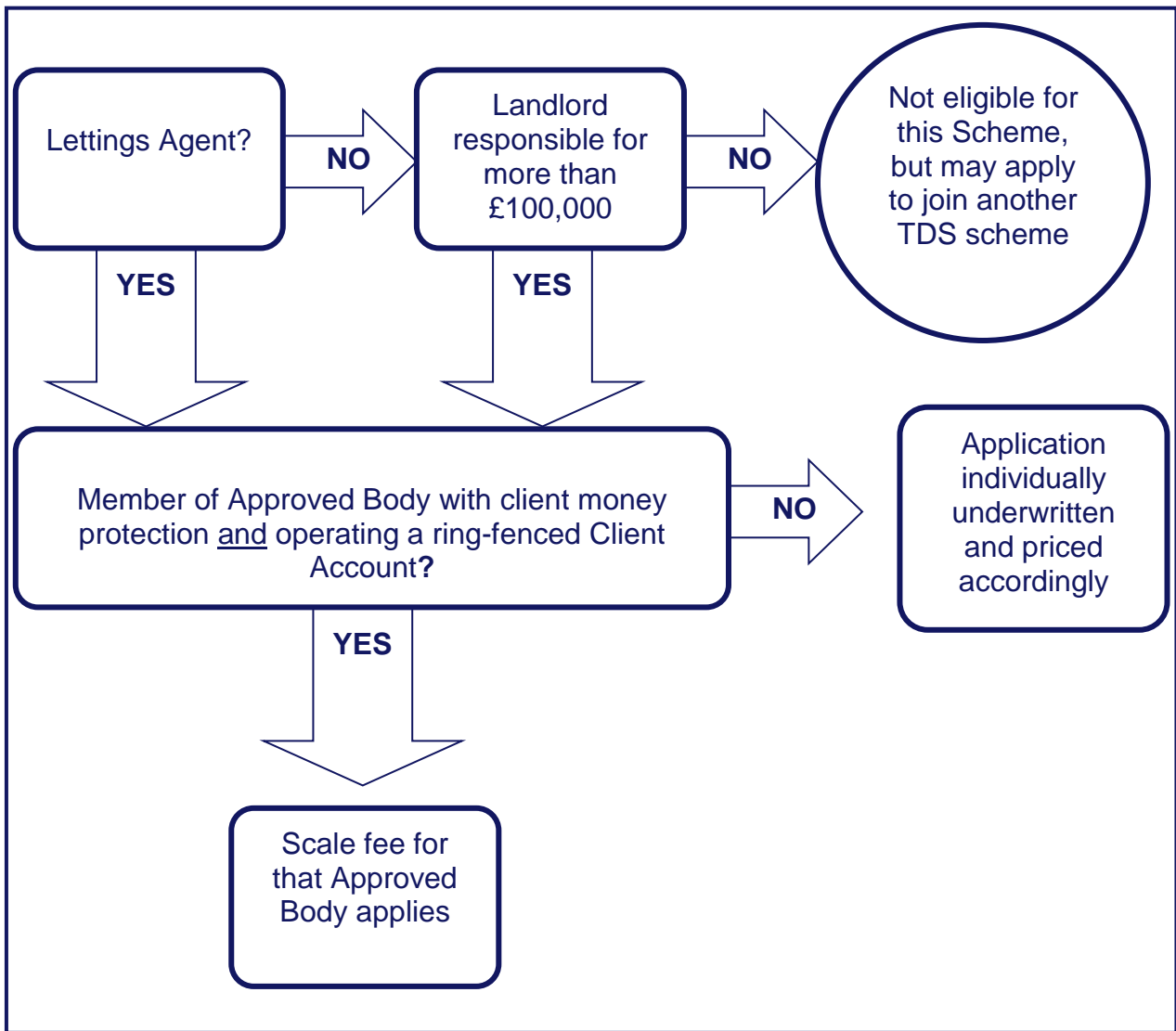


Figure 1: Membership Applications and Membership Fees

- 1.11 Members and prospective Members must Notify TDS as soon as practicable if any of the information provided at application stage is no longer accurate (for example, if a Member leaves an Approved Body) or if their circumstances change in any material way.
- 1.12 Successful applicants will be assigned to a Membership category according to the information they have provided, and this will affect the Membership Subscription as shown in Figure 1. Applicants who belong to an Approved Body are entitled to a streamlined Membership application process and a set price Membership Subscription dependent on which Approved Body they belong to. Further information about Membership Subscriptions is given in Rule 2.
- 1.13 Accredited Landlords who Protect Deposits through Unipol Student Homes are treated as belonging to an Approved Body.
- 1.14 TDS will assess applications for Approved Body status using the criteria listed in Rule 20.

- 1.15** Subject to an applicant meeting the criteria of these rules and the Approved Body confirming that the applicant is in good standing and not subject to recent or on-going disciplinary procedures, TDS will automatically grant Membership of this Scheme to a Lettings Agent or Corporate Landlord who belongs to an Approved Body.
- 1.16** Members must undertake to TDS that, if TDS notifies them to pay a Disputed Amount, the Member will pay the Disputed Amount to TDS within 10 days of receiving the Notice – even though at that time they may no longer be a Member.
- 1.17** Agents who arrange ASTs need to ensure that their Landlord clients are aware of their responsibilities relating to Deposit Protection, and obtain the Landlord clients' authority to fulfil them. Suggested clauses for including in Agent Members' terms and conditions of business are given in the document ***Prescribed Information and suggested clauses for inclusion in tenancy agreements and terms of business***. It is the Member's responsibility to ensure that the clauses in that document are compatible with the remainder of the Member's terms of business and suitable for each engagement before using them. TDS does not accept liability for any loss arising or cost incurred as a result of the recommended clauses being inconsistent with the remainder of the Agent's terms of business or inappropriate for particular circumstances.

2 Membership Subscriptions

- 2.1** Members of this Scheme must pay a yearly Membership Subscription.
- 2.2** TDS will determine a Member's level of Membership Subscription each year according to:
- 2.2.1** the Insurer's risk assessment;
 - 2.2.2** the risk posed by the Member (including the number and complexity of Disputes likely to be submitted for Adjudication);
 - 2.2.3** the information obtained at application stage and subsequently;
 - 2.2.4** the number of Deposits registered on the TDS tenancy database on a specific date.
- 2.3** Membership will not start until the Member has paid their Membership Subscription (or the first instalment of it where TDS has agreed that the Member may pay by instalments).
- 2.4** TDS may, at its discretion, proportionately reduce the first year's Membership Subscription if the Member joins the Scheme part-way through an Annual Subscription Period.
- 2.5** Members must pay their renewal Membership Subscription when due. Where a Member has not paid their renewal Membership Subscription (or the first instalment of it, where applicable) to TDS by the due date, their Membership will be suspended and the Member will not be able to register any new Deposits under the Scheme. During the period of suspension the Member will be in breach of the 2004 Act if they continue to take Deposits and do not protect them in another scheme. This position will continue until TDS lifts the suspension or the Member joins another scheme. For further information, please refer to the Housing

(Tenancy Deposit Schemes) Order 2007 (Statutory Instrument 2007 No 796, available to view and download at www.legislation.gov.uk).

- 2.6 The Membership Subscription does not include charges for non-standard services (for example, where a Member asks TDS to update the tenancy database on the Member's behalf). TDS reserves the right to charge a fee for non-standard services.
- 2.7 Failure to pay the Membership Subscriptions will result in TDS terminating the Membership in accordance with the procedure in Rule 12.
- 2.8 Membership Subscriptions and all fees are exclusive of VAT and Members must pay TDS any applicable VAT at the time the Membership Subscription or fee is due.

3 Tenancies covered by this Scheme

- 3.1 As long as details of the Deposit have been entered on the TDS tenancy database, this Scheme applies to Deposits relating to ASTs let or managed by the Member that are either in existence on the date the Member joined the Scheme or arise during Membership of the Scheme.
- 3.2 If a Fixed Term Tenancy that was in existence before the Member joined this Scheme ends after the Member joined and is followed by a Renewed AST or a Statutory Periodic Tenancy, TDS will treat the successor tenancy as a tenancy that arose during Membership.
- 3.3 If the Member specifies that Deposits relating to particular ASTs are not to be Protected in this Scheme, the Member must ensure that those Deposits are covered by another authorised tenancy deposit protection scheme. Failure to do so is a breach of these Rules and is likely to be a failure to comply with the 2004 Act.
- 3.4 A Deposit cannot and will not be Protected in this Scheme by a Member who does not hold the Deposit and does not have authority to continue to hold the Deposit throughout the tenancy.
- 3.5 If the Tenant initially pays the Deposit to a Member who is an Agent, and the Agent has no intention of retaining it, the Agent must make it clear to both the Landlord and the Tenant that the Landlord is solely responsible for complying with the relevant parts of the 2004 Act and protecting the Deposit. It would be prudent for the Agent to give this information to the parties in Writing. Rule 8 applies where the AST is on a Let-Only basis.
- 3.6 Deposits relating to Non-ASTs are not covered by The Dispute Service's insurance policy, and are therefore not Protected. Members must not enter details of Non-ASTs onto the TDS tenancy database or register them in the **Let-Only** part of the Scheme (see Rule 8). TDS no longer provides adjudication services for non-ASTs.
- 3.7 For a Deposit to be covered by this Scheme Members must enter all required details of the Deposit into the TDS tenancy database. If a Member does not register a Deposit on the TDS tenancy database, the Deposit will not be Protected, and the Tenant would be entitled to bring a claim through the courts for compensation under the 2004 Act. If a Member registers a Deposit on the TDS tenancy database, but does not enter all the required details, TDS will Protect the

Deposit for as long as the Deposit is held by the Member. However, if a Dispute arises in connection with that Deposit, TDS may award the Deposit (or the Disputed Amount, as applicable) to the Tenant by default. TDS will seek to recover any such award from the Member, using legal proceedings where appropriate.

4 Joint tenancies

4.1 TDS will treat Joint Tenancies as a single tenancy in which each Joint Tenant has an equal interest, unless there is clear evidence in the tenancy agreement to the contrary. This means that (unless the tenancy agreement stipulates otherwise):

4.1.1 The Member must register the Deposit as a single Deposit, even if the Joint Tenants have paid a share of the Deposit individually;

4.1.2 There is no need to nominate a “lead tenant”;

4.1.3 Only one application for ADR may be made in respect of the same Joint Tenancy (but the other parties to the Tenancy will have the option to respond to any such application);

4.1.4 TDS cannot refer a case for ADR if any one of the Joint Tenants objects to using ADR;

4.1.5 TDS will pay any Adjudication award to Joint Tenants in equal shares to each of them, unless (a) there is a clause in the tenancy agreement that specifies otherwise or (b) TDS receives Written instructions from all the Joint Tenants that some other arrangement (which the Tenants must specify) is to apply.

4.2 Further information about how to submit a Dispute and TDS’ treatment of Disputes relating to Joint Tenancies is given in the ***Adjudication Rules***.

5 Members’ management of the Deposit

5.1 Members of this Scheme who are also Members of an Approved Body must hold the Deposit in accordance with all relevant rules or byelaws which the Approved Body has established concerning accounting and dealing with Client Money.

5.2 If the Member is Bonded it must hold the Deposit in accordance with the requirements of its insurers. As a minimum requirement of the Scheme, all Members must hold the Deposits which they receive in a Client Account (as defined in these Rules i.e. a ring-fenced account).

5.3 Members must only hold the Deposits for which they (in the name they have registered with TDS) are responsible, and not for their subsidiaries or franchisees (who must apply for Membership separately). Agents must not hold or Protect Deposits on behalf of other Agents.

5.4 At the end of a tenancy, Members must promptly release, to the person entitled to it, any part of the Deposit over which there is no disagreement.

5.5 If there is a Dispute, the Member must transfer the Disputed Amount to TDS within 10 days of receiving Notice to do so and (subject to the absentee procedures in Rules 3.27 to 3.31 of the ***Adjudication Rules***) must not use the Disputed Amount

for any other purpose or pay it to any of the parties to the Dispute. TDS may take legal action against a Member who fails to transfer the Disputed Amount to TDS, to recover sums owed, and/or TDS may expel the Member from the Scheme.

- 5.6** If a Member (or their Landlord client) carries out works on a property in advance of an Adjudication, they do so at their own cost and risk.
- 5.7** The 2004 Act allows the holder of the Deposit to pay Deposit money with the agreement of both the Landlord and Tenant. It is prudent for a Member to obtain written evidence of any such agreement. If Landlord and Tenant do not agree, a Disputed Amount can only be paid to TDS or as ordered by the courts (subject to the absentee procedures in Rules 3.27 to 3.31 of the **Adjudication Rules**). Agent Members must therefore hold Deposits as Stakeholders and the terms of business applicable to their Landlord clients should reflect this. If a Landlord client stipulates that the Agent must hold the Deposit “as Agent” rather than “as Stakeholder”, the Agent must refuse. The Agent should explain that it would not be able to release any of the Deposit to the Landlord, at any point during the tenancy, without the agreement of the Tenant, or an Adjudication or an order of the court unless the absentee procedure referred to above applies. An Agent Member should consider whether it is appropriate to be responsible for the Deposit if the Landlord will not accept that position.

6 Complying with the requirements of the 2004 Act

When a deposit is received

- 6.1** Section 213 (1) of the 2004 Act stipulates that a Deposit must, as from the time when it is received, be dealt with in accordance with an authorised tenancy deposit protection scheme. It is important to be able to establish the date of receipt, because the Statutory Time Limit for Deposit protection is 30 days, beginning on the day the Deposit is received and/or is deemed to have been received. A Landlord or his Agent may receive a Deposit when payment is made, or be deemed to have received it at some other time. Guidance about when a Deposit is likely to be deemed to have been received is available in the document **Operational Procedure and Advice for Members**.

Initial Requirements

- 6.2** Section 213 (3) of the 2004 Act requires a Landlord to comply with the initial requirements of an authorised tenancy deposit protection scheme within the Statutory Time Limit.
- 6.3** This Scheme's ‘initial requirements’ are that the Member must enter on the TDS tenancy database all the required details about a Deposit if that Deposit has not previously been Protected.
- 6.4** After the Member has entered all the required details relating to a Deposit on the TDS tenancy database for the first time the Member does not need to do so again. This Scheme has no initial requirements for Renewed ASTs and/or Statutory Periodic Tenancies if all details about the Deposit were entered on the TDS tenancy database at the start of a prior tenancy. A fixed term which continues as a contractual periodic tenancy, after the fixed term has run out is a single tenancy and not a Renewed AST.

- 6.5** If (despite using reasonable endeavours) it is not possible for the Member to enter the required details on the TDS tenancy database, an alternative is available – see Rules 7.3 and 7.4.
- 6.6** Where an AST with a Deposit began before 6 April 2007 and is replaced with a Renewed AST or a Statutory Periodic Tenancy after that date, the Member must meet the Scheme's initial requirements. The Deposit is deemed to have been received at the start of the Renewed AST or Statutory Periodic Tenancy, the Statutory Time Limit begins, and all required details of the Deposit must promptly be entered on the TDS tenancy database.

Prescribed Information

- 6.7** Sections 213 (5) and (6) of the 2004 Act require a Landlord to give the Tenant (and any Relevant Person) Prescribed Information, including any leaflet published by the applicable tenancy deposit protection scheme, within the Statutory Time Limit. This is not an initial requirement of these Rules or of this Scheme, but it is what the law requires.
- 6.8** Landlords should serve Prescribed Information (including the Scheme Leaflet) on the Tenant and any Relevant Person when a Deposit is first actually received, or is first deemed to have been received after 6 April 2007. Prescribed information need only be re-served at renewal (or at the start of a statutory periodic tenancy) if the tenant(s), landlord(s), premises and tenancy deposit scheme protecting the deposit, have changed. If Prescribed Information is not served within Statutory Time Limits, the Member (and/or their Landlord clients) could risk Tenants and/or Relevant Persons bringing legal proceedings under the 2004 Act.
- 6.9** TDS is not responsible for providing Tenants and Relevant Persons with Prescribed Information. It is the Member's responsibility to:
- 6.9.1** check that the Prescribed Information is correct and complete;
 - 6.9.2** update the Prescribed Information if there is any change to it during the tenancy; and
 - 6.9.3** serve it on the Tenant and any Relevant Person.

Late registration

- 6.10** TDS has discretion to allow a Member to Protect a Deposit outside the Statutory Time Limit, as long as the tenancy is in existence at the date of Protection. Guidance on the factors TDS takes into account can be found in the document ***TDS and the late protection of Deposits***. If TDS does Protect a Deposit outside the Statutory Time Limit, a Dispute arising from that Deposit may be submitted to TDS for ADR.
- 6.11** The fact that TDS has permitted late registration will not in itself prevent a Tenant or Relevant Person from taking legal proceedings against a Landlord for failure to comply with the 2004 Act.
- 6.12** TDS will not be liable for any loss the Member or their clients suffer, or costs which the Member or their clients incur, if TDS refuses to Protect a Deposit outside the Statutory Time Limit.

6.13 TDS accepts no liability if a Tenant or Relevant Person makes a claim against a Member (or their Landlord client) who does not meet the initial requirements, or provide the Prescribed Information, within the Statutory Time Limit.

7 Protecting a Deposit and ending Protection

7.1 Members are encouraged to apply for Deposit Protection using the TDS tenancy database.

7.2 A Member will not be able to use the TDS tenancy database or apply to Protect a Deposit until it has paid to TDS any Membership Subscription or instalment that has become due.

7.3 A Member who is unable to register, change or end a registered Deposit on line should complete the appropriate form (available to download from www.tenancydepositscheme.com) and send it to TDS by post, with the applicable fee.

7.4 To apply to Protect a Deposit in this Scheme the Member must provide TDS with all the information TDS requests at the time of application (see application form). The Deposit will not be Protected until the Deposit has been registered on the TDS tenancy database. Members applying to Protect a Deposit by post should ensure the application and fee reaches TDS at least 2 Working Days before the Statutory Time Limit expires.

7.5 When the Deposit details have been added to the TDS tenancy database, TDS will make the Tenancy Deposit Protection Certificate available for the Member to download from the TDS website www.tenancydepositscheme.com.

7.6 Members should keep their entries on the TDS tenancy database up to date. For example, when a Fixed Term Tenancy ends, the Member should record on the TDS tenancy database whether it has been replaced by a Renewed AST or a Statutory Periodic Tenancy or whether Protection of the Deposit should end. When calculating Membership Subscriptions, TDS may take into account a Member's persistent failure to maintain their data.

7.7 TDS may make changes to the TDS tenancy database, or direct the Member to do so, at a Tenant's request if the Tenant is able to demonstrate to TDS that information has been wrongly entered

7.8 Where a Member informs TDS that the Protection of a Deposit should be ended, TDS will use reasonable endeavours to inform the Tenant before ending Protection.

7.9 If the tenancy has not ended, the Tenant (or one of the Joint Tenants) can object to the ending of Protection by telephoning the TDS customer contact centre.

7.10 Where the tenancy has ended and the Tenant is not satisfied with the proposed allocation of the Deposit, then the Tenant may apply to TDS for ADR within three months after the end of the tenancy. A Deposit will be fully allocated when (and not before) it has been paid in full to the person(s) entitled as a result of:

- (a) agreement between the parties (and where there are Joint Tenants, between all of them); and/or
- (b) an order made by a court of England and Wales; and/or
- (c) an Adjudication.

- 7.11** Although a Deposit may remain Protected for some time after the end of the tenancy, anyone wishing to use the ADR process must apply to TDS within three months after the end of the tenancy.
- 7.12** If the Member pays the Deposit or any part of it to any person other than TDS before Protection with TDS ends, the Member does so at their own risk. If the Member intends to allocate the Deposit in accordance with an agreement between the parties, it is prudent for the Member to obtain the parties' Written confirmation of what has been agreed before making any payment. This is because the parties have up to three months from the end of the tenancy to submit a Dispute to TDS. The Member remains liable to pay the Deposit to TDS unless and until the Deposit has been fully allocated (that is, paid to the person(s) entitled as agreed between the parties, as ordered by the court or as directed by an adjudicator) or, if sooner, until the Deposit has been protected with an alternative approved tenancy deposit protection scheme and Prescribed Information about that scheme has been served on the Tenant.
- 7.13** Where a Member designates a Deposit as "Let Only" on the TDS tenancy database, further requirements apply and these are set out in Rule 8.

8 Lettings Agents with 'Let Only' tenancies

- 8.1** For the purposes of this Scheme, a Let Only tenancy is a first AST or Renewed AST where an Agent Member introduces the Tenant to the property, and/or collects rent, but does not fully manage the property.
- 8.2** Only Lettings Agents who are Members of this Scheme can change the tenancy status of a Deposit which they register on the TDS tenancy database to "Let Only". (TDS will do this on a Member's behalf if the Member requests, but may charge a fee for data entry where it is reasonable to do so).
- 8.3** It is for the Agent Member to decide whether or not to designate a tenancy as Let Only.
- 8.4** Where a Member designates a tenancy as Let Only this Rule 8 applies in addition to the other Rules of this Scheme. Where this additional Rule conflicts with other Membership Rules, the Rules set out in this Section will take precedence in relation to Let Only tenancies.
- 8.5** TDS will not include Let Only Deposits in the annual Membership Subscription calculation.
- 8.6** Members must pay the prevailing Tenancy Deposit Protection Charge for each Deposit registered on the TDS tenancy database as Let Only.
- 8.7** Each month TDS will identify how many new Deposits each Member has designated as Let Only and invoice each Member for the total Tenancy Deposit Protection Charges payable that month.
- 8.8** A Deposit which was included in a Membership Subscription may subsequently be designated as Let Only provided that the tenancy:
- 8.8.1** is genuinely on a Let Only basis; and

- 8.8.2** was a Let Only tenancy when designated as such on the TDS tenancy database.
- 8.9** Each month TDS will identify how many Deposits a Member has changed to Let Only part-way through a tenancy, and invoice the Member for the Tenancy Deposit Protection Charges that are due.
- 8.10** Members can also indicate that a tenancy has changed status from Let Only to managed, but in such cases TDS will not refund any Tenancy Deposit Protection Charges already paid. TDS will include the managed tenancy in the subsequent year's calculation of the Membership Subscription if the Member continues to manage it when Membership is due for renewal.
- 8.11** Members must register a Let Only tenancy on the TDS tenancy database and complete all mandatory fields on the input screen. The Member must enter the details on the TDS tenancy database precisely as they appear in the tenancy agreement. The Deposit will be Protected once the required details have been entered. Entry of the required details is an 'initial requirement' for the purposes of the 2004 Act if the Deposit has not previously been Protected.
- 8.12** TDS may end Protection of a Deposit if the Member does not pay the Tenancy Deposit Protection Charges when due. Compliance with the 2004 Act will be the Member's (and their Landlord client's) responsibility and TDS will not accept liability for any consequence of ending Protection in these circumstances.
- 8.13** Once entered on the TDS tenancy database, the Deposit will be Protected until:
- 8.13.1** the tenancy has come to an end and the Deposit has been fully allocated (see Rule 7.10); or
 - 8.13.2** the tenancy is replaced with a Renewed AST; or
 - 8.13.3** there is a material change of the terms to a Statutory Periodic Tenancy (such as a change in the rent or the amount of the Deposit)
- whichever occurs first. For example, if a Statutory Periodic Tenancy arises at the end of a Fixed Term Tenancy, without any material change to the terms (e.g. an increase in rent), the Deposit will continue to be Protected, there are no 'initial requirements' at this stage and no new Tenancy Deposit Protection Charge will be payable. However, if there is then a material change in the terms, this is classed as a Renewed AST. The Member will need to update the TDS tenancy database and pay a new Tenancy Deposit Protection Charge, but as long as the Deposit has been protected previously, these will not be 'initial requirements' of the Scheme for the purposes of the 2004 Act.
- 8.14** If the tenancy is replaced with a Renewed AST or there is a material change of the terms to a Statutory Periodic Tenancy the Member must update the Deposit record on the TDS tenancy database by registering the new tenancy or terms. TDS will treat Renewed ASTs and material changes to the terms of a Statutory Periodic Tenancy as new registrations for the purposes of calculating the Tenancy Deposit Protection Charges due from the Member (see Rule 8.7) but the Scheme has no 'initial requirements' as long as the Deposit has previously been Protected.

- 8.15** Once the tenancy has come to an end the Member must update the Deposit's entry on the TDS tenancy database. TDS will then proceed as set out in Rule 7.10.
- 8.16** Members must keep their entries on the TDS tenancy database up to date. TDS may take into account a Member's failure to maintain their Let Only data, and make a default award to the Tenant, if a Dispute relating to a Let Only Deposit is submitted for ADR. In such circumstances, TDS will seek to recover the award from the Member (taking legal proceedings if appropriate).
- 8.17** TDS will not refund any Tenancy Deposit Protection Charges where a Member resigns from, or is expelled from, the Scheme. Rules 11 and 12 explain how TDS will treat the Deposit in such circumstances.

9 Changes in ownership of the property

- 9.1** The Scheme Rules continue to apply, regardless of a change in the ownership of the rented property, as long as:
- 9.1.1** the Membership Subscription continues to be paid when due; and
 - 9.1.2** the AST is the same as it was when the Deposit was registered (or has become a Statutory Periodic Tenancy with no material changes in the terms).
- 9.2** Members must Notify the affected Tenants and TDS promptly of a change in the ownership of a rented property.
- 9.3** Notification under Rule 9.2 should give the name and contact details of the new owner and must confirm either that:
- 9.3.1** the Deposit will continue to be Protected by TDS (if the new owner is in, or will join, the Scheme) or;
 - 9.3.2** the Deposit has been or will be transferred to another authorised tenancy deposit protection scheme (if the new owner is not a Member of this Scheme and does not intend to become a Member) and give details of the date of transfer and the scheme concerned.
- 9.4** Unless disposal of the rented property is by way of a Company share transfer, Members (or their Landlord clients) must Notify the new owner of the obligations the new owner will acquire concerning the Deposit (under the 2004 Act and under these Rules). If the new owner is not already a Member, TDS will give the new owner the opportunity to apply for Membership (subject to eligibility). It will be the responsibility of the new owner to serve up-dated Prescribed Information on the Tenant and any Relevant Person.
- 9.5** Until TDS receives satisfactory confirmation that the Deposit has been protected in a different authorised tenancy deposit protection scheme the Member must transfer the Disputed Amount to TDS if TDS directs.

10 Change of management

- 10.1** The Scheme Rules continue to apply, regardless of a change in the management of the rented property, or a change in the Member's business, as long as:
- 10.1.1** the Membership Subscription continues to be paid when due; and
 - 10.1.2** the AST is the same as it was when the Deposit was registered (or has become a Statutory Periodic Tenancy with no material changes in the terms).
- 10.2** Members should consider whether any change will amount to a deemed receipt of the Deposit and, if it does, arrange for the serving of up-to-date Prescribed Information on the Tenant and any Relevant Person.
- 10.3** Members must Notify the affected Tenants and TDS promptly if :
- 10.3.1** they transfer the ownership of their business or any part of it (unless it is by way of a Company share transfer); or
 - 10.3.2** they cease to manage a property on behalf of a Landlord client.
- 10.4** Notification under Rule 10.3 should give the name and contact details of the new business owner or manager (advising the Tenant to contact their Landlord if the identity of the new manager is not known) and must confirm either that:
- 10.4.1** the Deposit will continue to be Protected (if the new manager is, or is about to become, a Member of the Scheme) or;
 - 10.4.2** the Deposit has been or will be transferred to another authorised tenancy deposit protection scheme (if the new manager is not a Member of this Scheme and does not intend to become a Member) and give details of the date of transfer and the scheme concerned.

Changes in ownership of the Member's business

- 10.5** If a Member which is a Company disposes of their business (or part of their business) by way of share transfer, Membership and Protection will continue for as long as the Membership Subscription continues to be paid when due.
- 10.6** If a Member disposes of their business or any part of it in any way other than by a transfer of Company shares, the Member must either:
- 10.6.1** assign their Membership of the Scheme to the new owner, who must be or become a Member in their own right (in which case the Rules and Protection will continue as long as the Membership Subscription continues to be paid when due); or
 - 10.6.2** resign from the Scheme using the procedure in Rule 11 (in which case Protection of Deposits registered by the Member will end when Membership ends or, if earlier, when TDS receives satisfactory confirmation that the Deposit has been protected in a different authorised tenancy deposit protection scheme).
- 10.7** If a Member who ought to comply with Rule 10.6 does not do so, TDS may take steps to expel the Member using the procedure in Rule 12.

- 10.8** Unless disposal is by way of a Company share transfer, Members must Notify any person who acquires the Member's business of the obligations the new manager will acquire concerning the Deposit (under the 2004 Act and under these Rules). If the new manager is not already a Member, TDS will give them the opportunity to apply for Membership (subject to eligibility).

Change of management of the property

- 10.9** Where a Member's Landlord client transfers management of a rented property to another Agent, the Member must Notify the Landlord client of their obligations relating to the Deposit (under the 2004 Act and under these Rules) and provide the Landlord with a copy of the Notice sent to Tenants under Rule 10.3.
- 10.10** Until TDS receives satisfactory confirmation that the Deposit has been protected in a different authorised tenancy deposit protection scheme the Member must transfer the Disputed Amount to TDS if TDS directs.

11 Resigning from the Scheme

- 11.1** If a Member wants to resign from the Tenancy Deposit Scheme for Lettings Agents and Corporate Landlords, the following conditions and procedure will apply:

11.1.1 The resigning Member must give at least 6 months' prior Notice to TDS of their intention to resign, and at the same time send a copy of the Notice to their Approved Body (if they belong to one).

11.1.2 TDS may require the resigning Member to give TDS a Written undertaking, in such form as TDS may from time to time prescribe, if circumstances have changed since the Member gave an earlier undertaking. All such undertakings shall continue in full force and effect after the Member has left the Scheme.

11.1.3 The Member will remain liable to pay TDS the full Membership Subscription, or any outstanding instalments, for whichever is the longer of:

- (a) 6 months from the date the Notice of intention to resign (and, if later, any revised undertaking that is required) was served on TDS; and
- (b) the remainder of the Annual Subscription Period in which the Member served TDS with Notice of their intention to resign.

- 11.2** Within 14 days of receiving a Member's Notice of intention to resign (and, if later, any revised undertaking that is required), TDS will consider the Member's Notice and determine the date on which Deposits registered by the Member are to cease to be retained under the Scheme.

- 11.3** After making its decision TDS shall promptly give Notice to the Agent (if any), to the Landlord and to the Tenant:

11.3.1 identifying the Deposit in question;

11.3.2 informing the Agent (if any), the Landlord and the Tenant of the date when the Deposit will cease to be retained under the Scheme; and

11.3.3 reminding the Agent (if any), the Landlord and the Tenant that the Member has an obligation to comply with the initial requirements of the authorised scheme to which the Deposit will be transferred, and provide Prescribed

Information in relation to that scheme, before the Deposit ceases to be retained under this Scheme.

- 11.4** The 2004 Act requires that a Notice given under Rule 11.3 must be given at least two months before the date on which (a) the Deposit ceases to be retained under the Scheme, or (b) the Landlord's Membership terminates (as the case may be).
- 11.5** Membership will terminate on the date referred to in Rule 11.3.2 .
- 11.6** The Deposit will cease to be Protected by TDS on the date referred to in Rule 11.3.2 or, if earlier, on the date when the Member provides TDS with Written confirmation (satisfactory to TDS) that:
- (a) the Deposit has been Protected under another authorised tenancy deposit protection scheme; and
 - (b) Prescribed Information in relation to that scheme has been given to the Tenant and to any Relevant Person.
- 11.7** With regard to tenancies that ended before termination of a Membership, the Scheme will continue as if the Landlord were still a Member. In such cases:
- 11.7.1.1** The Member must send a Disputed Amount to TDS if directed to do so;
 - 11.7.1.2** Protection will continue until the Deposit has been fully allocated (i.e. paid as agreed, as ordered by the court or as directed by an Adjudicator);
 - 11.7.1.3** Access to the ADR process will remain available for 3 months after the last day of the tenancy.
- 11.8** No Dispute may be submitted to the ADR process more than 3 months after the last day of Membership.
- 11.9** Until TDS receives satisfactory confirmation that the Deposit has been protected in a different authorised tenancy deposit protection scheme the Member must transfer the Disputed Amount to TDS if TDS directs.
- 11.10** TDS may, but has no obligation to, inform the Department, a relevant Approved Body, or any authorised tenancy deposit scheme that the Member is no longer in this Scheme.
- 11.11** A Member who serves on TDS a Notice of intention to resign may (in Writing) withdraw the Notice at any time before TDS issues a Notice confirming the date of termination of Membership under Rule 11.3.2, but not afterwards. TDS may charge the Member an administration fee where a Notice of intention to resign is withdrawn, to cover its costs of dealing with the Notices and any withdrawal.
- 11.12** If a Member does not give Notice of intending to resign but simply fails to apply for renewal of their Membership, or pay their Membership Subscription (or any instalment of it) when due, TDS will treat the Membership as having lapsed at the end of the Annual Subscription Period for which the Membership Subscription was last paid. The Member may be liable to serve up-dated Prescribed Information in such circumstances.
- 11.13** TDS accepts no liability for any losses suffered or expenses incurred if a Member fails to ensure that a Deposit is Protected as required under the 2004 Act.

12 Expulsion from the Scheme

12.1 TDS may terminate a Membership in accordance with this Rule if, in its reasonable opinion, the Member has not complied with a Relevant Obligation. The following constitute Relevant Obligations:

- 12.1.1** to comply with the Rules of this Scheme and the Adjudication Rules;
- 12.1.2** to comply with any undertakings the Member has given to TDS;
- 12.1.3** to act professionally and with integrity at all times and in accordance with good industry practice and to use all reasonable endeavours to comply with the relevant provisions of the 2004 Act;
- 12.1.4** to co-operate with TDS in the manner reasonably to be expected of a Member;
- 12.1.5** to maintain the status on which Membership was granted;
- 12.1.6** to maintain any Client Account in accordance with good accounting practice, the Scheme Rules, and the rules of the Member's Approved Body;
- 12.1.7** to ensure that the Member is at all times able to pay its debts as they fall due (whether owed to TDS or otherwise) and for the avoidance of doubt the occurrence of an Insolvency Event will be a breach of this obligation;
- 12.1.8** to comply with the Insurer's requirements as notified to the Member from time to time;
- 12.1.9** to meet the Insurer's eligibility criteria (as notified to the Member from time to time) throughout their Membership;
- 12.1.10** to charge Tenants fairly if recovering from them the costs of using the Scheme or assisting them with a Dispute;
- 12.1.11** to communicate promptly and effectively with all parties, including TDS, having an interest in a Deposit paid to the Member;
- 12.1.12** not, in TDS' opinion, to generate a disproportionately high number of Disputes – whether the Adjudicator finds in the Landlord's favour or not. This obligation includes ensuring tenancy agreements and other documents used in connection with an AST are clear and appropriate to the tenancy, as well as dealing fairly and professionally with Tenants when proposing deductions from Deposits and making proper and reasonable attempts to settle Disputes before referring them to TDS.

12.2 Before terminating a Landlord's Membership for failure to comply with a Relevant Obligation TDS will:

- 12.2.1** give Notice to the Member, and any applicable Approved Body, that TDS proposes to end the Membership, together with a statement of its reasons for the proposed termination;
- 12.2.2** allow the Member to make representations to TDS as to why Membership should not be terminated within such period as TDS may stipulate in the

Notice of proposed termination, which shall not be less than 14 days from the deemed date of receipt of the Notice.

- 12.2.3** consider the Member's representations (if any) before reaching a decision on whether to terminate the Membership;
 - 12.2.4** decide whether or not to terminate the Membership and give the Member Notice of TDS' decision.
- 12.3** During the period between TDS' service of the Notice of proposed termination and TDS' final decision on termination of the Membership, the Member will be treated as suspended and will not be able to Protect any new Deposits with TDS or renew the Protection of any Deposits already registered with TDS. Deposits that were Protected before the Member was suspended will continue to be Protected as usual during the period of suspension and the Member must transfer any Disputed Amount to TDS if TDS directs.
- 12.4** During the period of suspension the Member will be in breach of the 2004 Act if they continue to take Deposits, or if Deposits are carried forward to Renewed ASTs or Statutory Periodic Tenancies, and the Member does not protect them (or renew protection) in another authorised tenancy deposit protection scheme. For further information, please refer to the Housing (Tenancy Deposit Schemes) Order 2007 (Statutory Instrument 2007 No 796 available to view and download at www.legislation.gov.uk).
- 12.5** If TDS confirms its decision to terminate the Membership, TDS must serve a Membership Termination Notice on the Member and on each Tenant whose Deposit was Protected in the Scheme by the Member:
 - 12.5.1** identifying the Deposit in question;
 - 12.5.2** informing the Agent (if any) the Landlord and the Tenant of the decision made by TDS and stating the date when the Deposit will cease to be Protected; and
 - 12.5.3** reminding the Landlord and the Tenant that the Member has a statutory obligation to comply with the initial requirements of the authorised scheme to which the Deposit will be transferred, and provide Prescribed Information in relation to that scheme, before the date the Deposit will cease to be retained under this Scheme.
- 12.6** The 2004 Act stipulates that TDS may not terminate Membership within the period of 3 months beginning with the date on which the Notice of proposed termination was received (see Rule 17) and TDS will not do so. TDS must serve any Membership Termination Notice at least 2 months before TDS terminates the Membership.
- 12.7** The Membership will terminate on the termination date specified in the Membership Termination Notice. This must be at least 2 months after the date TDS serves (or is deemed to have served, if later) the Membership Termination Notice.
- 12.8** When Membership ends under this Rule:

- 12.8.1** Protection ends for Deposits registered by the Member relating to tenancies which continue beyond the termination date specified in the Membership Termination Notice;
- 12.8.2** Protection continues for Deposits registered by the Member relating to tenancies which ended before the termination date specified in the Membership Termination Notice until allocation of the Deposit has been finalised (i.e. paid as agreed by the parties, as ordered by the court, or as directed by an Adjudicator). The Member must transfer any Disputed Amount to TDS if TDS directs. Access to Adjudication will remain available in such cases for 3 months after the last day of the tenancy.
- 12.9** Deposits relating to ASTs and agreements for ASTs entered into or arising after service of a Membership Termination Notice will not be Protected by the Scheme.
- 12.10** TDS may at its sole discretion, and subject to the Insurer's approval, continue to Protect Deposits for longer than the periods specified in this Rule.
- 12.11** Without any liability to the former Member, TDS may publish by which means, and in which media, TDS considers most appropriate the fact and circumstance of a Member's removal from the Scheme and/or publish details relevant to the Membership termination. TDS may also notify the Member's Approved Body or any other relevant body or organisation of the fact and circumstances of the end of the Membership, again without TDS having any liability to the former Member. This Rule does not purport to exclude liability for defamation or malicious falsehood.
- 12.12** If TDS decides to exclude a Member:
- 12.12.1** the Member must notify its Approved Body (if any) of the exclusion within 14 days of receiving the Membership Termination Notice;
- 12.12.2** the Member must not, after receiving the Membership Termination Notice, represent to actual or prospective Landlords or Tenants (or Relevant Persons) that new Deposits taken by the Member will be Protected by this Scheme or that Deposits which have fallen due for re-protection will be Protected by the Scheme, or after the Membership has terminated state or imply that they remain a Member of the Scheme;
- 12.12.3** TDS will not refund any pre-paid Membership Subscription and notwithstanding termination of Membership the Member will remain liable for any unpaid Membership Subscription relating to the remainder of the Annual Subscription Period, and for any other sums (including Disputed Amounts) due or payable to TDS, until they are paid;
- 12.12.4** as regards any Deposit relating to a tenancy that has or will come to an end before termination of the Membership, the Member will comply with TDS' instructions until the Deposit has been distributed either as agreed between the Landlord and the Tenant, or as awarded through TDS, or as ordered by the court and until all sums owed by the Member to TDS have been paid, whichever is the later;
- 12.12.5** the Member will abide by TDS' Adjudications relating to Disputes that are eligible for the ADR process;

- 12.12.6** TDS will Notify affected Tenants that the Deposit will continue to be Protected until the date specified in the Membership Termination Notice or (where a tenancy has ended) that the Tenant may apply for Adjudication for up to 3 months after the end of the tenancy;
- 12.12.7** the Member may also be subject to sanctions and or disciplinary action by their Approved Body or Bonding scheme where relevant. (See also TDS guidance document ***Operational Procedures and Advice for Members***).
- 12.13** During the period between TDS serving a Membership Termination Notice and the date for the end of Membership specified in the Membership Termination Notice the Member must:
- 12.13.1** not make any representation or imply that:
- (a) new Deposits taken by the Member will be Protected by TDS; or
 - (b) a Deposit will be Protected by TDS for longer than the timescales in this Rule;
- 12.13.2** comply with TDS' instructions relating to Deposits and Membership;
- 12.13.3** comply with the Rules of this Scheme and the Adjudication Rules.
- 12.14** TDS may also terminate the Membership of a Member in the event that the Insurer refuses to provide insurance cover for Deposits held by the Member. Such termination will be subject to the procedure outlined in Rules 12.2 to 12.13 except that the timescales for termination of Membership shall be at TDS' discretion, having regard to the availability of insurance.
- 12.15** TDS may terminate the Membership of a Member following a change in the Scheme Rules. Such termination will be subject to the procedure outlined in Rules 12.2 to 12.13 except that the timescales for termination of Membership shall be at TDS' discretion. In such cases, TDS will refund a fair and reasonable proportion of the Membership Subscription relating to the unexpired remainder of the Annual Subscription Period (if any) but without further liability to the Member or (where the Member is an Agent) their clients, or to Tenants and Relevant Persons.
- 12.16** If TDS decides against terminating a Membership, the Deposit will continue to be Protected until Protection ends in accordance with these Rules.
- 12.17** Until TDS receives satisfactory confirmation that the Deposit has been protected in a different authorised tenancy deposit protection scheme the Member must transfer the Disputed Amount to TDS if TDS directs – even if at the time they are no longer a Member.
- 12.18** If TDS decides against terminating a Membership, TDS will promptly give Notice of its decision to the Member and the Member's suspension will end on the date TDS serves such Notice. TDS will not contact the Tenant or an Agent's Landlord clients in cases where Membership will continue.
- 12.19** Provided TDS has acted in accordance with this Rule and the 2004 Act, TDS will have no liability to a Member, their Landlord clients, Tenants or Relevant Persons for any losses sustained or costs incurred during any period of suspension

(whether or not the Member is expelled from the Scheme) or in relation to TDS' termination of the Membership.

- 12.20** Where it is reasonably necessary or appropriate for TDS to bring legal proceedings against a Member (whether under any Rule or under the general law), the Member will fully and effectually indemnify TDS against any and all costs and expenses, including legal and other professional costs and disbursements, incurred in relation to or in contemplation of such proceedings and in the enforcement or attempted enforcement of any judgment against the Member.
- 12.21** TDS may review the status of an Approved Body in the event of persistent breaches of Scheme Rules by Members belonging to that organisation; and/or if, in the opinion of TDS or the Insurer, the Approved Body is not effective in ensuring its members comply with Scheme Rules.

13 What happens to Deposits when Membership ends?

13.1 Whilst a Lettings Agent or Corporate Landlord remains a Member of this Scheme, the Deposit will remain Protected as set out in Rule 7 unless the Member registers the Deposit with a different authorised tenancy deposit protection scheme. If the Member registers the Deposit with a different authorised tenancy deposit protection scheme, the Member must inform TDS promptly, and Protection in the Scheme will end.

13.2 When a Member resigns from the Scheme (see Rule 11) the Deposit will cease to be Protected on the date referred to in Rule 11.3.2 or, if earlier, on the date when the Member provides TDS with Written confirmation (satisfactory to TDS) that:

13.2.1 the Deposit has been Protected under another authorised tenancy deposit protection scheme; and

13.2.2 Prescribed Information in relation to that scheme has been given to the Tenant and to any Relevant Person.

13.3 When a Member is expelled from the Scheme (see Rule 12):

13.3.1 Protection ends for a Deposit registered by the Member if that Deposit relates to a tenancy which will continue beyond the termination date specified in the Membership termination notice referred to at Rule 12.5.

13.3.2 Protection continues until allocation of the Deposit has been finalised (see Rule 7.10) if the Deposit relates to a tenancy which ended before the termination date specified in the Membership termination notice referred to at Rule 12.5.

13.4 Whether a Member is due to leave the Scheme following resignation under Rule 11 or expulsion under Rule 12:

13.4.1 The departing Member will be responsible for arranging to protect the Deposit in a different authorised tenancy deposit protection scheme immediately Protection with TDS ends. A former Member will have failed to comply with the 2004 Act if they do not do so.

13.4.2 If a Deposit registered by the Member relates to a tenancy that ended before the Membership ended, the parties to that tenancy shall be entitled

to use the ADR process in relation a Dispute concerning that Deposit, for a maximum of 3 months from the last day of the tenancy.

14 Providing information about Deposit Protection

14.1 Documentation relating to the Scheme, including these Rules, the **Adjudication Rules** and the Scheme Leaflet, can be downloaded from the website www.tenancydepositscheme.com.

14.2 It is the Member's (and their Landlord clients') responsibility to comply with The Housing (Tenancy Deposits) (Prescribed Information) Order 2007. A copy of the Order (Statutory Instrument 2007 No 797) is available free to download at www.legislation.gov.uk.

14.3 TDS will make available a Tenancy Deposit Protection Certificate to the Member when a Deposit is registered on the TDS tenancy database. **TDS is not responsible for providing a certificate or the Prescribed Information to Tenants or Relevant Persons.** It remains the Member's responsibility to provide the Prescribed Information to the Tenant and any Relevant Person, give the parties the opportunity to sign to say it is correct, and (if they wish) obtain and provide proof of service.

14.4 TDS will provide Scheme Leaflets in hard copy on request (for which the Member will have to pay TDS a fee, fixed by TDS from time to time) or electronically (free of charge) for Members to pass on to Tenants and Relevant Persons. Members must give Tenants and Relevant Persons a copy of the Scheme Leaflet as part of their Prescribed Information obligations.

14.5 TDS has an obligation to collect and maintain appropriate data on each Deposit that it Protects. Members are required to submit data, on each Deposit that they apply to Protect, within the Statutory Time Limit of when the Deposit was first received or deemed to have been received.

14.6 If the Member is not able to enter the data on-line, they may record it on the TDS Form **Registration of a Tenancy** and submit the Form to TDS within 7 days of receiving the Deposit. (This deadline is in the Member's own interest to ensure that Statutory Timescales will be met). TDS will make an extra charge (fixed by TDS from time to time) to cover data entry costs. TDS will not enter the data (and the Deposit will not be Protected) until the data entry fee has been paid.

14.7 Any of the following changes during the tenancy must be recorded and entered directly on the TDS tenancy database by the Member within 30 days of their taking place:

14.7.1 Names or contact details of Tenant;

14.7.2 Sale (or other ownership transfer) of the property;

14.7.3 Change in managing Agent;

14.7.4 Issue of new tenancy agreement;

14.7.5 Change in the amount of the Deposit.

- 14.8** If the Member is not able to enter the data on-line, they may record changes to a tenancy by telephoning the TDS customer contact centre.
- 14.9** The Member must Notify TDS when a tenancy has ended. Members are encouraged to Notify by up-dating the TDS tenancy database. Failure to Notify an end of tenancy may result in an increased Membership Subscription.
- 14.10** When the Member Notifies TDS that a tenancy has ended, TDS will contact the Tenant(s) for confirmation that the Deposit has been fully allocated before ending Protection.
- 14.11** If there is no Dispute, Members must provide the following data to TDS promptly following the end of the tenancy:
- 14.12.1** the date that the Deposit Protection ended (i.e. when agreement on the allocation of the Deposit has been formalised); and
 - 14.12.2** the amount of the Deposit paid to each party.
- 14.13** Members should be aware that if the Tenant does not receive the Deposit within 10 days of asking the Member to return it (beginning with the date the request was made) the Tenant is entitled to apply to TDS for ADR in the three-month period after the end of the tenancy.
- 14.14** Where a Dispute arises, TDS must collect and maintain the following data for each dispute:
- 14.14.1** name and contact details of each Tenant;
 - 14.14.2** property address to which the Deposit relates;
 - 14.14.3** name and address of the Landlord;
 - 14.14.4** total value of the Deposit;
 - 14.14.5** total value of the Disputed Amount;
 - 14.14.6** nature of the Dispute;
 - 14.14.7** outcome of the Dispute.
- 14.15** Members must co-operate with TDS in collecting the data required by TDS. It is the Member's responsibility to make sure that they have all necessary licences and consents to enable them to do so lawfully.
- 14.16** TDS may request from Members such other information as may be necessary for the purposes of operating the Scheme or the ADR service or providing statistical information to the Department.

15 Data protection responsibilities

- 15.1** TDS is registered with the Information Commissioner under the Data Protection Act 1998. It is aware of its obligations relating to the obtaining, recording, holding or disclosing of personal data. It has suitable systems and controls to comply with the

eight data protection principles, namely that such personal data must be: fairly and lawfully processed; processed for limited purposes; adequate, relevant and not excessive; accurate; not kept longer than necessary; processed in accordance with the data subject's rights; secure; not transferable to other countries without adequate safeguards.

- 15.2** Members must provide TDS with such information as it reasonably requires, both routinely and on request, on the appropriate form, on-line, by computer disc or by e-mail. Forms are available direct from TDS or by downloading from the website www.tenancydepositscheme.com. It is the Member's responsibility to ensure that they (and their Landlord clients) have complied with the Data Protection Act 1998 (as amended) in relation to any personal data which they transfer to TDS.
- 15.3** Members must, without charge, provide copies of or, at TDS' request, allow TDS to examine, any records and/or documents that TDS considers may be relevant to a Deposit.
- 15.4** Members must provide such reasonable assistance as TDS may request from time to time, such information as TDS may reasonably require to reduce the possibility of money laundering and/or fraud, and such information as TDS may be required to collate by the Department.
- 15.5** By applying for Membership, Landlords and Agents are deemed to give TDS their consent to store, copy or otherwise process such information as they may supply concerning their Membership and any Dispute in which they are involved and:
- 15.5.1** disclose it to other parties and organisations which TDS considers to be appropriate to the resolution of a Dispute;
 - 15.5.2** use it for confidential survey and research purposes;
 - 15.5.3** to provide information relating to tenancies of premises, including personal or business address data of Landlords or Agents, to Local Housing Authorities in England in accordance with section 212A of the Housing Act 2004. Local Authorities may combine this information with other information obtained by them, and they may pass this information to an organisation who provides services to the authority in relation to their duties under parts 1-4 of the Housing Act 2004;
 - 15.5.4** disclose it to relevant bodies who have an interest in and/or a duty to maintain and sustain good practice and the integrity of the Scheme or their profession.
 - 15.5.5** share it with the Member's Approved Body or other regulator where TDS considers disciplinary action may be appropriate.
- 15.6** By applying for Membership, Landlords and Agents represent and warrant to TDS that:
- 15.6.1** they are appropriately registered with the Information Commissioner (unless they are exempted from doing so) and will provide written proof of registration upon request from TDS within 14 days of any such request being made;

- 15.6.2** they are and will remain the data controller of all their Tenants' and (if an Agent) Landlords' personal data and any Relevant Person's data and will comply with the Data Protection Act 1998 (as amended) in all respects for as long as they are a Member or subject to an undischarged undertaking given to TDS;
- 15.6.3** they will inform Tenants and any Relevant Persons and (if an Agent) Landlords of the purposes for which TDS may use their personal data, including the fact that TDS or the Department may invite Tenants and Landlords to participate in surveys from time to time.
- 15.7** The Department has appointed TDS as administrator of the Scheme to act on the Department's behalf to gather and process information obtained from Members and other sources, for the purpose of safeguarding Deposits and facilitating the resolution of Disputes. The Department may ask TDS to provide information about tenancies generally for the purpose of fulfilling its statutory functions.
- 15.8** Further information about TDS and the Scheme is available from the TDS website www.tenancydepositscheme.com or by contacting TDS (address and other details are given at the end of these Rules).

16 Complaints

- 16.1** TDS is committed to providing an excellent Deposit Protection and Alternative Dispute Resolution service to Agents, Landlords and Tenants.
- 16.2** TDS and Members agree that each of them will deal with complaints in a constructive, helpful and courteous way.
- 16.3** The procedure for receiving and dealing with complaints about service is available on TDS' website (www.tenancydepositscheme.com). TDS will also provide paper copies of the complaints procedure on request.

17 Jurisdiction and service of documents

- 17.1** These Rules shall be governed by the laws of England and Wales.
- 17.2** Any legal proceedings to be served in respect of the Rules which are to be served outside the said jurisdiction shall be deemed to be sufficiently served if they are sent by first-class surface or airmail post (provided they are properly addressed and the correct postage has been paid).
- 17.3** All legal proceedings served by or on behalf of TDS may be in English without the necessity for translation into any other language.
- 17.4** In this Rule, "address" shall include electronic addresses and fax numbers where the context requires. The "last-known address" of a Landlord, Agent or Tenant shall be the address current on the TDS tenancy database at the time a Notice or document was sent.
- 17.5** Except where the 2004 Act provides otherwise, the provisions for the delivery and service of Notices and other documents relating to or required by these Rules (other than legal proceedings) are as follows:

17.5.1 Service by text message or other standard messaging or similar service shall not be proper service.

17.5.2 Notices and other documents sent (including courier service) to the last-known address of the intended recipient shall be treated as having been received and served:

- (a) By hand or courier service:
 - (i) on the day after delivery if delivered before 17.00 hours; or
 - (ii) on the second day after delivery if delivered after 17.00 hours.
- (b) By special or recorded delivery: at the time proof of delivery was obtained from the actual recipient.
- (c) By ordinary first-class post: on the second day after the day of posting.
- (d) By ordinary second-class post: on the fourth day after the day of posting.
- (e) By electronic means:
 - (i) at the time of transmission if sent before 16:00 hours; or
 - (ii) the day after transmission if sent after 16:00 hours.

17.5.3 Where there is a dispute about service of a Notice or other document, the burden of proof shall be on the sender.

17.6 Service on TDS of any document relating to actual or intended legal proceedings must be by post and marked for the attention of The Company Secretary. TDS does not accept service of documents relating to actual or intended legal proceedings by fax or e-mail. Until further notice, TDS' address for service will be: The Dispute Service Ltd PO Box 1255, Hemel Hempstead Herts, HP1 9GN.

18 Exclusions and limitations of liability

18.1 TDS does not accept liability for the actions or omissions of any third party who is neither an employee of TDS nor an Adjudicator acting in the course of their duties.

18.2 TDS does not accept liability for losses occurring or costs incurred as a result of any event which is outside TDS' reasonable control (such as, without limitation, computer failure, industrial or terrorist action, fire, epidemic, flood, serious adverse weather conditions and any other event generally considered to be a force majeure or an Act of God).

18.3 TDS does not accept liability to any one or more Joint Landlords for acting on the instructions of any other Joint Landlord. TDS does not accept directions from Joint Landlords to deal only with instructions agreed unanimously by Joint Landlords. Agents should explain this to their clients in their terms and conditions of business.

18.4 If a Joint Landlord dies, it will be their personal representatives' responsibility to Notify TDS and to indicate whether the Joint Landlord owned the property as beneficial joint tenant or tenants in common. The personal representatives should take legal advice if they are uncertain of the meaning of these terms, or do not know which applies. A probate solicitor will usually be able to help.

18.5 TDS may delay or suspend an application for Membership or Deposit Protection to enable further consideration of the application (for example, where there is a reasonable suspicion that someone is attempting to commit fraud). TDS will notify a prospective Member where there is a delay in processing their application, but shall not be liable for any cost to the Member of, or for any consequential or

economic loss arising from, a delay in processing, or rejection of, an application for Membership or Deposit Protection.

- 18.6** TDS does not accept liability for cheques missing in transit or any money sent to TDS electronically which does not reach TDS' account. If a Member expects to receive a payment from TDS and it has not arrived, the Member must notify TDS promptly and co-operate with TDS in resolving the problem.
- 18.7** Various other exclusions and limitations appear in these Rules and in the ***Adjudication Rules*** and shall have no lesser effect if not repeated in this Rule 18.

19 Amendments

- 19.1** These Rules and the ***Adjudication Rules*** may be amended by TDS from time to time and all such amendments shall be deemed incorporated and shall take effect on the next Working Day after TDS Notifies such changes to Members, or such later date as the Notification may specify.
- 19.2** Members agree to abide by the Scheme Rules and the ***Adjudication Rules*** as amended and in force from time to time, even if an amendment to the Rules, or a later edition of the Rules, is implemented after a Deposit has been Protected in the Scheme.
- 19.3** If, in TDS' opinion, proposed changes to any Rules are significant, TDS will consult with Members to the extent and in the manner it deems appropriate, and consider Members' representations, before deciding whether to implement such a change.
- 19.4** If any changes incorporated into these Rules are reasonably regarded by any Member as material and unreasonable, that Member may Notify TDS of its intention to withdraw from the Scheme in accordance with the provisions set out in Rule 11. In such cases, the Scheme Rules in force immediately before the Member's Notification shall continue to apply to Deposits held by that Member until Protection by TDS ends. Undertakings given by the Member to TDS will remain effective until discharged.
- 19.5** If any court in England and Wales should decide that any Scheme Rule is unreasonable or for some other reason unenforceable, only so much of the Rule as is unenforceable shall not apply. Similarly, if a court should decide that any amendment to a Scheme Rule is unenforceable, the Rule as it was immediately before amendment shall continue to apply (to the extent that is possible without altering the general intent and purpose of such of the amended Rules as are enforceable or any Member's undertaking which has not been discharged).

20 Approved Bodies

- 20.1** Membership organisations operating in the Private Rented Sector are able to apply to TDS to become Approved Bodies.
- 20.2** When TDS assesses whether an organisation may become an Approved Body it will ask questions such as:

Does the organisation:

- have defined minimum entry standards?
- enforce a comprehensive code of practice?

- have defined service standards?
- require annual financial reporting?
- impose rules for the handling of Client Money through properly designated Client Accounts?
- have a pro-active compliance monitoring regime?
- require its members to have Client Money protection insurance, and if so to what level?
- require members to hold professional indemnity insurance; and if so to what level?
- require members to have an internal complaints procedure?
- have defined and effective disciplinary procedures?
- offer a training and qualification programme?
- have recognition as a statutory regulator under any government scheme or legislation?
- have endorsement by Accreditation Network UK?

Will the organisation be able to offer TDS:

- an unconditional guarantee in the event of financial default by any of its members? If so, to what extent?
- assistance with membership administration e.g. collection of subscriptions?

20.3 Some questions and criteria will carry a differential weighting to reflect their importance to TDS, and the risks associated with particular groups of Members and prospective Members. Not all criteria will apply to all prospective Approved Bodies.

20.4 TDS may, at its discretion, reach agreement with one or more Approved Bodies to provide other assistance to TDS with administering the Scheme.

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Contact details

Tenancy Deposit Scheme
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Herts HP1 9GN
Tel: 0300 037 1000
Fax: 01442 253 193
Email: deposits@tds.gb.com
Web: www.tenancydepositscheme.com

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