



Management Agreement



THIS AGREEMENT is made the 1st day of November 2005

BETWEEN

London Borough of Hackney.
(Name of local housing authority)

(called "the Council" in this Agreement)

AND

North and South Arden Tenant Management Organisation.
(Name of Tenant Management Organisation)

(called "the TMO" in this Agreement)

This Agreement is made under section 27 of the Housing Act 1985 (as substituted by article 2 of the Regulatory Reform (Housing Management Agreements) Order 2003 and the **Housing (Right to Manage) Regulations 1994**.

The Council agrees for the TMO to exercise, in relation to -

- (a) those of its dwellings as are specified in Schedule 1 to Chapter 1 of this Agreement; and
- (b) other land specified in that Schedule, being land held for a related purpose,

such of the Council's management functions as are specified in this Agreement, on the terms set out in it.

The Council and the TMO agree to act in accordance with the terms of this Agreement. Terms that appear in **Bold Letters** are defined in Chapter 9.

This Agreement is sealed with the Council's common seal with the authority of the Council.

Signed Borough Solicitor/Chief Executive

This Agreement is sealed with the TMO's common seal by resolution of the TMO.

Signed Committee Member

Signed Committee Member

Note: the sealing clause is to be adapted as appropriate.

This Modular Management Agreement ("MMA") for Tenant Management Organisations (TMOs) is approved by the Secretary of State under regulation 4(10) of the Housing (Right to Manage) Regulations 1994, and replaces that approved in 1994 (ISBN 0 11 752 892 7). Clause 17(1)(e) of Chapter 1 of the 1994 MMA permits a TMO, and a local housing authority to agree to vary an agreement they have entered into on the basis of the 1994 MMA, to conform to this MMA.

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An individual Agreement entered into by a TMO and a Council will consist of -

- (i) the non-optional clauses of the MMA;
- (ii) the optional clauses in the MMA chosen by the parties, within the constraints specified in the MMA;
- (iii) Annexes;
- (iv) the Schedules referred to in the MMA and listed in the Contents at the end of each Chapter, after the list of the clauses constituting that Chapter.

The Schedules have to comply with the statutory guidance, given under regulation 7 of the Housing (Right to Manage) Regulations 1994 by the Secretary of State, and this is set out in

[name of publication, date]. This publication also contains non-statutory guidance, prepared by [ODPM]. The non-statutory guidance which, unlike the statutory guidance, is not binding, is intended to assist TMOs and Councils to prepare the Schedules to their individual Agreements

CHAPTER 1

GENERAL PROVISIONS OF THE AGREEMENT

- 1 Parties to the Agreement
- 1 This Agreement is made between the Council and the Tenant Management Organisation (the TMO).
- 2 The Council and the Property
- 2 The Council is a local housing authority under Part 2 of the Housing Act 1985. The Council is the freehold or leasehold owner of the Property which constitutes the subject-matter of this Agreement and has management functions in respect of it. The dwellings and land constituting the Property are listed in Schedule I (Property included in the Management Agreement) and in this Agreement, unless a contrary intention appears -
 - a) a reference to a dwelling shall be construed as a reference to a dwelling listed in that Schedule (a "Property dwelling");
 - b) a reference to a tenant, leaseholder, freeholder or lawful occupier shall be construed as a reference to a tenant, leaseholder, freeholder or lawful occupier of a Property dwelling.
- 3 The TMO
- 3.1 The TMO is an organisation registered under the provisions of the Industrial and Provident Societies Act 1965. The TMO's constitution is set out in Annex A.
- 3.2 While this Agreement is in force the TMO will not amend its constitution without first getting the Council's permission in writing. The Council will not withhold or delay giving its permission without good reason. At no time may the TMO amend its constitution so that it no longer meets the conditions in regulation 1(4) of the Right to Manage Regulations
- 4 Statement of Exercise of Management Functions under the Right to Manage
- 4.1 The Council agrees for the TMO to carry out those of its management functions as are specified in this Agreement, which is derived entirely from the Modular Management Agreement that has been approved by the Secretary of State under regulation 4(10) of the Right to Manage Regulations.
- 4.2 Nothing in this Agreement gives the TMO any ownership or other legal rights, or imposes any obligations in respect of the Property other than the right to manage and maintain the Property. Nothing in this Agreement affects the Council's legal relationship with its tenants or leaseholders and the Council retains its statutory, contractual and common law obligations to them and all other clauses in this Agreement are subject to this clause.

5 Starting Date

(Option A: The same Starting Date for all functions exercised by the TMO.)

5.1 The TMO will exercise the functions it has agreed to exercise under this Agreement from the Starting Date of 1st November 2005 until the date on which this Agreement is ended in accordance with clause 20.

6 The TMO's Exercise of Management Functions

6.1 The TMO will carry out terms of this Agreement.

6.2 In carrying out these functions the TMO will comply with the Council's legal obligations.

6.3 The TMO may, with the consent of the Council, appoint another person to carry out management functions

6.4 The TMO agrees to exercise its functions in accordance with the performance standards set out in the Schedules to this Agreement. The TMO also agrees -that in exercising its functions it will have regard to the duties of the Council to meet the requirements of a best value authority under the provisions of Part I of the Local Government Act 1999 and orders made under that Part.

6.5 The Council agrees to inform the TMO of any action by the TMO which could lead to a reduction in the Housing Revenue Account Subsidy following a determination under section 80 of the Local Government and Housing Act 1989 relating to the provisions of services, facilities and rights or to disproportionate rent increases. The TMO on being so informed agrees not to carry out any such action.

6.6 The TMO will comply with obligations imposed by law on the Council in so far as such obligations apply to the TMO, and obligations imposed by law on the TMO.

7 Insurance

7.1 The Council will insure against the following risks:
storm damage
subsidence
fire damage
damage caused by burglary
and consequent damage caused by leaking pipes.

7.2 The Council remains liable for risks it has not insured against. It will not pass on to the TMO any costs that arise from not insuring against those risks.

7.3 The TMO will arrange insurance with an insurer approved by the Council, to a level that the Council may reasonably require covering the following risks arising out its obligations under this Agreement:

- a) claims from third parties (public liability insurance)
- b) claims by TMO staff (employers liability insurance)
- c) the dishonesty of TMO staff or officers (fidelity guarantee insurance)
- d) loss through fire or theft of property belonging to the Council
- e) such other risks in respect of the TMO's responsibilities under this Agreement as the Council may from time to time reasonably require

8 Exclusion of section 27(13) of the Housing Act 1985 and General Indemnity

- 8.1 The Council and the TMO agree, under the provisions of section 27(15)(a) of the Housing Act 1985, that the provisions of section 27(13) of that Act do not apply to any management function of the Council exercisable by the TMO under this Agreement. Accordingly, the TMO will indemnify the Council against any loss or damage which the Council suffers as a result of an error or failure by the TMO in fulfilling its obligations under this Agreement or as a result of such an error or failure by another person appointed by the TMO in accordance with clause 6.3.
- 8.2 Subject to the provisions of clause 1 of Chapter 7 in respect of the transfer of employees, the Council will indemnify the TMO against any loss or damage which the TMO suffers as a result of an error or failure by the Council in fulfilling its obligations under this Agreement or as a result of such an error or failure by a contractor or employee of the Council.

9 Confidentiality

- 9.1 The TMO will treat as strictly confidential all information in its possession in relation to tenants, leaseholders and freeholders of a dwelling. The TMO will use such information only for the purpose of fulfilling its obligations under this Agreement. The TMO will not give the information to or permit it to be seen by any other person or organisation except with the express advance written consent of the tenant, leaseholder or freeholder concerned, unless it is required to do so by law.
- 9.2 The Council will treat all information about tenants, leaseholders and freeholders of a dwelling as strictly confidential except where it is necessary for the Council to use such information to fulfil its statutory obligations.
- 9.3 In fulfilling their respective obligations under this Agreement, the Council and the TMO will register if necessary, as data users and comply with the requirements of the Data Protection Act 1998.
- 9.4 The TMO agrees to publish a Code of Confidentiality, which will have regard to the Code of Confidentiality published by the Office of the Deputy Prime Minister.

10 Equal Opportunities

- 10.1 The TMO will act in accordance with its Equal Opportunities Policy and Procedures set out in Schedule 2. The TMO will operate equal opportunities policies and procedures in exercising all of its functions under this Agreement. By implementing equal opportunities policies and procedures the TMO will ensure that it does not discriminate against any person. Discrimination will not occur on the grounds of race, ethnic origin, disability, nationality, gender, sexuality, age, class, appearance, religion, responsibility for dependents, unrelated criminal convictions, being HIV positive or having AIDS, or any other matter which causes any person to be treated with injustice.
- 10.2 The TMO will have regard to the Commission for Racial Equality Code of Practice in Rented Housing and any other future guidance issued with CRE or Central Government Approval
- 10.3 The TMO will supply the following persons with a statement of the TMO's equal opportunities Policy and Procedures -
- a) every member of the TMO;
 - b) every person applying for a tenancy of a dwelling; and
 - c) any other Person. requesting a copy, upon payment of a reasonable charge.
- 10.4 The TMO will keep proper records of the implementation of its Equal Opportunities Policies and Procedures in all aspects of its work including:
- a) the letting of vacant dwellings and the admission of members.
 - b) the employment of staff.
 - c) Committee membership.
 - d) racial, neighbourhood or other harassment and tenancy disputes.
 - e) the appointment of and employment of contractors or consultants; and
 - f) the delivery of services to the tenants and leaseholders of dwellings.

11 Training

- 11.1 So that the TMO has the necessary skills and knowledge to fulfil its obligations under this Agreement the TMO will ensure that its members, committee members and staff have access to training opportunities, including training in:
- a) TMO rules, committee skills and democratic decision making;
 - b) understanding of the meaning of equality of opportunity and how the TMO puts its equal opportunities policies into practice;

- c) the TMO's obligations and the performance standards referred to in this Agreement;
- d) the skills and knowledge required to enable the TMO to fulfil its obligations to the standards referred to in this Agreement or the statutory guidance.

11.2 The TMO will have reasonable access to training run by the Council which is necessary for the TMO to fulfil its obligations under this Agreement, including training on new legislation, council policies and procedures and the Council's management systems which the TMO has adopted.

11.3 The Council will, within the resources available to it, make every effort to meet any written request for assistance to enable the TMO to fulfil its training obligations as set out in clause 11.1.

11.4 The TMO will prepare a training plan at the beginning of each financial year. A report on the training undertaken by TMO members and staff in the previous twelve months will be presented at the TMO's AGM. A copy of this report will be sent to the Council.

12 Information to Tenants

12.1 The TMO will provide the tenants and leaseholders of dwellings with information about the workings of the TMO.

13 Conflicts of Interest

13.1 The TMO will provide in its standing orders that a committee member, officer or employee of the TMO will declare any private or personal interest in any matter related to the carrying out of his or her obligations or functions. A person who has declared such an interest will neither attend the discussion leading to a decision on the matter nor vote on it. The TMO will, in reaching its decision on the matter, ensure that corrupt, undue or unfair personal gain is avoided.

13.2 Committee members and officers of the TMO will declare their personal business interests in a register of interests, which will be kept up to date. The register will be kept at the TMO's main office. It will be open to inspection during the TMO's normal office hours by any person wishing to inspect the register, subject to reasonable notice being given.

14 Right to Represent

14.1 Where a tenant, leaseholder or freeholder requests the TMO to act as his or her representative in dealings with the Council, the Council will accept the TMO as such a representative.

14.2 Where the TMO requests the Council to recognise it to represent the collective interests of its members, the Council will comply with that request.

15 Councils Right of Access to Dwellings

15.1 The Council will have right of access to a dwelling to carry out the management functions it retains under this Agreement or in accordance with its legal obligations. The Council will give the TMO twenty-four hours' notice (except in emergency where immediate access without notice is reasonably required).

15.2 Where the Council exercises its right of access to a dwelling under a tenancy or leasehold agreement, it will give notice to the TMO at the same time as it gives notice to the tenant or leaseholder.

15.3 In exercising a right of access, the Council will cause as little disturbance, nuisance, annoyance as possible to residents in a dwelling and will make good to the TMOs reasonable satisfaction any damage caused in exercising the right.

15.4 Nothing in this clause gives the Council the right to enter any tenanted part of a dwelling unless this is permitted in the relevant tenancy agreement.

16 Interpretation of this Agreement and General Provisions

16.1 Where a clause in this Agreement has the words "clause not included" this indicates that an optional clause in the Modular Management Agreement has not chosen. This keeps the numbering of clauses in this Agreement the same as in the Modular Management Agreement.

16.2 All of the Schedules in this Agreement are agreed between the Council and the TMO and, except where a Schedule is constituted by a list of property items or services or it is otherwise stated, are in accordance with guidance given by the Secretary of State under regulation 7 of the Right to Manage Regulations.

16.3 The TMO agrees to publish a Code of Governance, which will have regard to the Code of Governance for Tenant Management Organisations published by the Office of the Deputy Prime Minister.

16.4 The following interpretation provisions in relation to this Agreement apply -

- a) a reference in this Agreement to an Act of Parliament or a Statutory Instrument is a reference to that Act or Statutory Instrument as amended from time to time;
- b) a reference to a numbered clause in a Chapter is, unless a different Chapter is specified in relation to that clause, a reference to the clause bearing that number in that Chapter, and a reference to a numbered Schedule in a Chapter is, unless a different Chapter is specified in relation to that Schedule, a reference to the Schedule bearing that number to that Chapter;
- c) words in the singular include the plural, and vice versa;

- d) words importing the masculine gender include the feminine, and vice versa.
- e) where the Agreement provides that a party to the Agreement "will" perform some action, this is to be interpreted as providing that that party accepts as a term of this Agreement that it will perform that action, and that failure to do so will constitute a breach of the Agreement.

17 Decision to Continue this Agreement

- 17.1 At each Annual General Meeting after the second anniversary of the Starting Date, the TMO will consider a resolution stating that it wishes to continue managing the Property under the terms of this Agreement. Should such a resolution be rejected by a simple majority vote at the Annual General Meeting, the TMO will hold a Special General Meeting within 21_days to consider the giving of the three months' notice of termination of this Agreement under the provisions of clause 20.2.4 below.
- 17.2 At least every five years the TMO will consult with all the tenants and leaseholders of dwellings, through either a secret ballot or an anonymous questionnaire, whether this Agreement should continue. The purpose of the consultation will be to ascertain:
 - a) opinion as to the effectiveness of the TMO as manager of the Property; and
 - b) whether-the majority of those responding; and
the majority of secure tenants responding,
wish the TMO to continue as manager of the Property under this Agreement.
- 17.3 If the majority of those responding to the consultation and a majority of secure tenants responding do not wish the TMO to continue as manager of the Property, the TMO will have the right to hold a secret ballot within three months of the date on which the outcome of the consultation is announced.
- 17.4 The TMO will inform the Council of the result of any consultation exercise under clause 17.2 above within 21 days of the date of the ballot or, as the case may be, within 21 days of the closing date for returning the questionnaire. If a ballot is held under clause 17.3 and the majority of those voting and a majority of secure tenants voting still do not wish the TMO to continue as manager of the Property the TMO will give notice to end the Agreement under clause 20.2.4.

18 Variations to this Agreement

- 18.1 This Agreement may be varied in the following ways:
 - a) by the TMO:
 - i) obtaining certification by an Approved Person that, in relation to additional management functions that the TMO wishes to exercise which are included as

options in the Modular Management Agreement, the TMO has the required level of competence; and

- ii) then giving the Council at least four months written notice, or such other period as may be agreed, that it has decided by a simple majority vote at a general meeting to take on those management functions, in which case this Agreement will be varied by adopting the appropriate clauses of the Modular Management Agreement.
- b) by the TMO, giving the Council at least four months written notice; or such other period as may be agreed, that it has decided by a simple majority vote at a general meeting to cease exercising a management function specified in this Agreement. And that it wishes the Council to resume exercising that management function: the Agreement will be varied by adopting the appropriate optional clauses in the Modular Management Agreement;
- c) by the Council and the TMO agreeing to replace or amend a Schedule to this Agreement provided that the new or amended Schedule satisfies the requirements that were satisfied by the schedule being replaced or amended.
- d) by the Council and the TMO agreeing to vary the Agreement by selecting different options from the Modular Management Agreement provided that the new options do not give the TMO additional functions.
- e) by the Council and the TMO agreeing, under clause 10.2 of Chapter 2, that the Council will take over the Estate services that have been provided by the TMO
- f) where the secretary of State modified the Modular Management Agreement
 - i) where the modifications are required in consequence of a change in primary or subordinate legislation, by the TMO or the Council giving notice to the other party requesting that the clauses in this Agreement requiring to be modified be replaced by the modified clauses;
 - ii) where the modifications do not fall within paragraph (i), by the TMO and the Council agreeing to replace the clauses in this Agreement corresponding to the modified clauses with those clauses.

Modifications within either paragraph (i) or (ii) may also include the renumbering of clauses in this Agreement that are identical in content with clauses in the modified Modular Management Agreement in accordance with the numbering in that Modular Management Agreement;

- g) by the Council terminating the operation of Option C or Option D of clause 3 of Chapter 6 in accordance with the provisions of clause 3.11 of Option C or, as the case may be, clause 3.10 of Option D.

Where the variation falls within paragraphs (a) to (f) the Agreement as varied will come into force on a date agreed by the Council and the TMO.

- 18.2 Variations to the Agreement in accordance with clauses 18.1 a), b), d), e) and f) will be effected by a Deed of Variation signed and sealed by the Council and the TMO. The variations will come into effect at the date specified in the Deed of Variation. The Deed of Variation will state the adjustment to the Allowances, if any, arising from the variation made.
- 18.3 The Council and the TMO agree that the effect of-
- a) A tenant of a dwelling exercising the Right to Buy his or her home under the provisions of Part 5 of the Housing Act 1985;
 - b) a leaseholder exercising the Right to Enfranchise under the Leasehold Reform, Housing and Urban Development Act 1993; or
 - c) the application of regulation 2(1)(c)(ii) of the Right to Manage Regulations, which permits a further proposal notice under the Right to Manage to be served by tenants in TMOs which manage more than 2,500 homes to form their own smaller TMO, will be to vary this Agreement in the appropriate manner solely by virtue of this clause. Such a variation will come into effect, together with the necessary adjustments to the Allowances, from the date on which the Right to Buy or the Right to Enfranchise purchase is completed or the relevant Starting Date of the management agreement under the Right to Manage comes into force.
- 19 Failure to Perform [\[link to Chapter 7 and Chapter 8\]](#)
- 19.1 Without affecting any other rights the Council may have under this Agreement or in law the following provisions of this clause will apply where the Council is of the opinion that there has been a failure to perform by the TMO.
- 19.2 Subject to the provisions of clause 19.9, in the event of the TMO failing to exercise a management function or a management task to the performance standards referred to in clause 1 of Chapter 8, or where there has been a financial breach by the TMO, the Council will work with the TMO to develop, agree and implement an Improvement Plan to improve the performance in order to reach those standards or prevent serious financial breaches.
- 19.3 In order to assist with the development of an Improvement Plan with which the TMO is in agreement, the Council may, in the first instance, appoint an independent person to advise on the performance standards of the TMO, the action proposed by the Council, and the views of the TMO, and to recommend to the Council and the TMO the steps that should be taken, to be included in the Improvement Plan, to deal with the problems that have arisen. The consent of the TMO is required that the person proposed by the Council for these purpose may so act, but such consent is not to be unreasonably withheld.
- 19.4 In the event of the TMO failing to implement the Improvement Plan (including such failure following the appointment of an independent person in accordance with clause 19.3 and any

recommendations made by him), the Council may serve a Breach Notice on the TMO. Within 21 days of receipt of a Breach Notice the TMO will remedy the breach or notify the Council in writing why it cannot remedy the breach within this period, and specify the date by which the breach will be remedied.

- 19.5 If the breach is not remedied within 21 days of receipt of a Breach Notice, or the Council does not accept the adequacy of the reasons given by the TMO why it cannot remedy the breach within this period, or does not accept the date specified by the TMO as the date by which the breach will be remedied, the Council may serve a Warning Notice, warning the TMO that unless the breach is remedied within seven days the functions specified will be removed from the functions being exercised by the TMO.
- 19.6 If the TMO has not corrected the breach within seven days of receiving the Warning Notice the Council may in writing terminate the TMO's exercise of the functions specified in the Breach Notice and Warning Notice from a specified date. The TMO will have to wait 24 months (or such shorter period as the Council may decide) before it can resume exercising the functions by virtue of of the application of clause 18.1.a).
- 19.7 Without affecting any other rights the TMO may have under this Agreement or at law:
- 19.7.1 if the Council does not fulfill any of its obligations in respect of management functions not being exercised by the TMO under this Agreement or its obligations under this Agreement the TMO may serve a Failure Notice on the council
- 19.7.2 within 21 days of receipt of a Failure Notice the Council will remedy the failure or notify the TMO in writing why the Council cannot remedy the failure within this period and specify the date by which the failure will be remedied.
- 19.8 In the event of any management function becoming exercised again by the Council under the terms of clause 19.6 the Allowances will be reduced by an amount (calculated in accordance with Schedule 1 to Chapter 5) which reflects the reduction in the number management functions exercised by the TM)
- 19.9 Where the Council is satisfied that there are serious failings of the TMO as described in clause 7.8 of Chapter 8, the Council may serve a Supervision Notice in respect of all of the TMO's management functions or those of its management functions that are specified in the Supervision Notice. The provisions of Schedule 3 (Supervision Notice Policy and Procedure) shall apply to Supervision Notices and the action that can be taken after a Supervision Notice has been served.
- 19.10 The effect of the service of a Supervision Notice is that the relevant management functions become exercisable by direction of the Council from such date as is specified in the Notice and for such period as is specified in the Notice , unless the Council specifies a shorter period after the Notice has been served.

The initial period specified in the Notice shall not exceed six months, and the Council may on the expiry of the initial period specify an additional period not exceeding three months and, when that period expires, a further additional period not exceeding three months.

19.11 Where the Council proposes to serve a Supervision Notice on the TMO, in a case where a Special Review has not taken place, the TMO may require the Council to appoint an independent person to advise on the reasonableness of the Council's action in all of the circumstances of the case and make recommendations on the content of the proposed Supervision Notice. The Council will appoint an independent person when required to do so by the TMO, and will accept any recommendations made by him unless it is satisfied that there are exceptional circumstances which make it inappropriate for it to do so. The provisions of Schedule 3 will apply to the appointment of the independent person and the procedures to be followed by him. The consent of the TMO is required that the person proposed by the Council for these purposes may so act, but such consent is not to be unreasonably withheld.

19.12 Where the relevant conditions set out in the Supervision Notice are satisfied, the Council will restore to the TMO the exercise of those functions specified in the Supervision Notice in respect of which the relevant conditions are satisfied, by serving a Supervision Termination Notice on the TJVIO, which will specify the date from which the exercise of those functions will be restored.

20 Ending this Agreement

20.1 This Agreement will continue until ended in one of the ways set out in this clause.

20.2 This Agreement will end:

20.2.1 upon service of a written notice by the Council if the TMO :

- a) becomes insolvent;
- b) has a receiver appointed;
- c) makes an arrangement with its creditors; or
- d) passes a resolution for voluntary winding up;

20.2.2 if the TMO has passed a resolution to end this Agreement at a duly convened General Meeting and the Council agrees in writing that it will end on a date agreed by the parties;

20.2.3 if the TMO has passed a resolution to end this Agreement at a duly convened General Meeting and gives the Council at least three months' written notice of the date on which the Agreement will end;

20.2.4 if the TMO, having failed to secure a mandate to continue as manager of the Property under clause 17, gives the Council three months' written notice to end this Agreement;

20.2.5 on the expiry of three months' written notice given to the TMO by the Council if the TMO has received a Warning Notice from the Council under the provision of clause 19.5, and either:

- i) the TMO has failed to remedy the breach or initiate the necessary action to remedy the breach to the reasonable satisfaction of the Council, or
- ii) the TMO has not taken the necessary steps to transfer the relevant functions to the Council under clause 18.1b).

20.2.6 On the expiry of the period specified in a Supervision Notice under clause 19.9 including any further period that is specified, where the relevant conditions set out in the Notice have not been satisfied by the TMO. The Council will give the TMO at least three months' notice in writing at the end of the initial period or the first additional period, that a Supervision Termination Notice is not to be served on it

20.2.7 if the Council sells or transfers its ownership or interest in the Property; or

20.2.8 on the date a Right to Enfranchise purchase is completed, if the TMO has given the Council at least one month's written notice that the reduction in the number of dwellings or the change in its obligations is such that the TMO wishes to end the Agreement

20.3 Prior to the sale or transfer of its ownership or interest in the Property and consequent ending of this Agreement under clause 20.2.7, the Council undertakes to use its best endeavours to ensure that the successor landlord enters into a similar agreement with the TMO.

20.4 Any notice to end this Agreement will expire on the last day of a month unless given under clause 20.2.3.

20.5 If this Agreement ends the Council will within one month of the date on which the Agreement ends give written notice to the Secretary of State.

20.6 The ending of this Agreement will not affect any rights or liabilities of the TMO or the Council that have arisen under this Agreement before the date on which it ends including, in particular, the following rights or liabilities :

- a) chapter 1, clause 8: the general indemnities;
- b) chapter 3, clause 9 the payment of rent due;
- c) chapter 4, clause 9 the payment of service charges and ground rent collected;

- d) chapter 5, clause 8 the payment of the balance of funds; and
- e) chapter 7, clause 1 the indemnity in respect of staff.

- 20.7 If this Agreement ends the TMO will within three months of the end of this Agreement produce an account and balance sheet as at the date on which this Agreement ends.
- 20.8 If this Agreement ends any monies paid to the TMO to carry out its management functions under this Agreement that remain in the TMO accounts (except the surplus account) once creditors have been paid will be returned to the Council within 3 months.
- 20.9 If this Agreement ends the TMO will as soon as is reasonably practicable hand over to the Council such information and records as the Council may reasonably require for the future management of the Property.
- 20.10 If this Agreement ends the TMO will as soon as is reasonably practicable hand over to the Council any property listed under Paragraph 3 of Schedule I which is owned by the Council.

- Schedule 1 Property included in the Management Agreement**
- Schedule 2 Equal Opportunities Policies and Procedures**
- Schedule 3 Supervision Notice Policy and Procedure**

- Annex A Copy of the TMO's Constitution**

CHAPTER 2

Clause 4.2 of Chapter 1 provides for all of the Council's statutory, contractual and common law obligations to tenants and leaseholders to be unaffected on the coming into force of this Agreement. Accordingly the Council's repairing obligations under, for example, the tenancy agreement or lease, section 4 of the Defective Premises Act 1972, or section 11 of the Landlord and Tenant Act 1985 remain unchanged

*This Chapter deals with the exercise by the TMO of Management Functions the TMO has agreed to take on from the Council which arise from the Council's repairing obligations to its tenants and leaseholders. The Chapter also deals with the arrangements between the Council and the TMO for **Major Works**, which may extend beyond fulfilment of the Council's repairing obligations to its tenants and leaseholders, and a number of other matters.*

REPAIRS, MAINTENANCE AND SERVICES PROVISION

1. Functions of the TMO in respect of Responsive and Planned Maintenance Repairs

*(Option B: The TMO may carry out those classes of **Responsive and Planned Maintenance Repairs** that it wishes providing that the division of repair functions is practicable. **The Allowances** (chapter 5, clause 1) must be adequate to cover the repair works the TMO takes on*

1.1 The TMO will exercise Management functions in respect of the classes of **Responsive and Planned Maintenance Repairs** listed in Annex A to Schedule 1 (**Functions and Performance Standards of the TMO and the Council in respect of Repairs**), being classes of repairs that it is practicable for the TMO to carry out, subject to the provisions of clauses 8 and 9 and the provision in relation to classes of repair included in a **Major Works** programme.

1.2 Nothing in this clause will impose upon the TMO an obligation to repair, redecorate or maintain:

1.2.1 any fixture, fitting or appliance provided by a tenant, leaseholder or freeholder as an alteration or improvement except where the Council would be under an obligation to repair, redecorate or maintain it;

1.2.2 any part of a **Property dwelling** or any fixture, fitting or appliance in a **Property dwelling** which is in need of repair or maintenance because of any defect in the design or construction of the **Property dwelling** or the manufacture of any fitting, appliance or component part (unless funds for such repairs have been included in the **Allowances**, see Chapter 5 clause I); or

1.2.3 any part of a **Property dwelling** or any fixture, fitting or appliance which a tenant, leaseholder or freeholder is under an obligation to maintain under his or her tenancy, lease or freehold transfer.

- 1.3 The TMO agrees to make good any damage and to carry out repairs to any dwelling (including redecoration) which may be needed as a result of the TMO carrying out the **Responsive and Planned Maintenance Repairs** it has agreed to carry out under this clause.
- 1.4 The TMO will carry out repairs that would otherwise be carried out by the Council under Option B, clause 2.1 where the expected cost of those repairs is less than an amount agreed in writing by the Council and the TMO.

2 Functions of the Council in respect of Repairs

(Option B: The Council continues to exercise some of its repairing functions)

- 2.1 Subject to Option B, clause 1.4, the Council will carry out all repairs to any dwelling that are not listed in Annex A to Schedule I that are within its repairing obligations as landlord, or under the terms of a freehold transfer. Such repairs include, but are not restricted to, those listed in Annex B to Schedule 1.
- 2.2 The Council agrees to make good any damage and to carry out repairs to any dwelling (including redecoration) which may be needed as a result of the Council carrying out repairs under this clause.

3 Failure to Repair

- 3.1 In carrying out repairs under clause 1, the TMO will meet the standards and time scales agreed between it and the Council and set out in Schedule 1.
- 3.2 In carrying out repairs under clause 2, the Council will meet the standards and time scales agreed between it and the TMO and set out in Schedule 1.
- 3.3 If, in the opinion of the TMO, the Council is not carrying out a repair that it has agreed to carry out or which is within its repairing obligation as landlord, or is not meeting the standards and time scales set out in Schedule 1, the TMO may inform the Council in writing of the repair required in a Repair Notice.
- 3.4 If, in the opinion of the Council, the TMO is not carrying out a repair that it has agreed to carry out or is not meeting the standards and time scales set out in Schedule 1, the Council may inform the TMO in writing of the repair required in a **Repair Notice**.
- 3.5 If a **Repair Notice** is served under clause 3.3 or clause 3.4, the repair will be carried out in accordance with the standards and time scales set out in Schedule I.
- 3.6.1 If the repair specified in the **Repair Notice** is not completed within the time scales set out in Schedule 1, the party who served the notice will have the right to carry out the repair and recover from the other party any costs reasonably incurred in carrying out the repair.

4 Major Works : Initiation by the Council

- 4.1 The Council may draw up proposals for **Major Works** for cyclical redecoration, and associated repairs, structural repairs, renewal of components, fixtures or fittings, and improvements to dwellings if it considers them to be necessary or desirable.
- 4.2 If the Council decides that Major Works are necessary or desirable the Council will inform the TMO and provide the TMO with details of the Council's proposals.
- 4.3 The TMO will consult with tenants, leaseholders and freeholders over Major Works proposals, complying with the requirements under sections 20 and 20ZA of the Landlord and Tenant Act 1985, unless the Council is undertaking consultation under clause 15 of Chapter 7. The TMO will carry out statutory consultation in accordance with clause 15 option B of Chapter 7 and non-statutory consultation in accordance with clause 16 of Chapter 7. In finalizing its response, the TMO will take into account any comments tenants, leaseholders or freeholders may make.
- 4.4 The Council will give proper consideration to the TMO's response to Major Works proposals and to any changes which the TMO may suggest. [Link to clause 6.]

5 Requests for Major Works by the TMO

- 5.1 The TMO may request the Council to draw up proposals for Major Works and the provisions of clause 4.1 will apply to such a request.
- 5.2 Each year the Council will advise the TMO of the information that the Council reasonably requires to consider a request under clause 5.1 and the timetable for such requests to be considered. A reasonable period will be specified for that information to be provided.
- 5.3 Before submitting a request under clause 5.1, the TMO will consult any tenants, leaseholders and freeholders who may be affected by the proposed Major Works. In finalising its request, the TMO will take into account any comments tenants, leaseholders or freeholders may make. The TMO will carry out consultation in accordance with clause 16 Chapter 7.
- 5.4 The Council will give full and fair consideration to a request under clause 5.1. In deciding whether to accept the request, the Council will give equal consideration to the need for repairs or improvements to the Property as it gives to the need for repairs or improvements to other properties in the Council's housing stock.

6 Major Works

(Option A: The Council carries out Major Works but agrees to consult the TMO in relation to them) [Link to Clause 8)

- 6.1 If the Council intends to undertake Major Works, the Council will consult the TMO about its proposals (including the nature and scope of the works, the proposed contract terms and conditions and the methods by which it intends that the works should be

carried out), in accordance with the provisions set out in Schedule 2 (**Procedure for Consultation on Major Works**).

The TMO may request the Council to amend its proposals or to include specific terms and conditions in contracts for the Major Works. The Council will give reasoned consideration to any requests made by the TMO under the consultation procedure under this clause. Where the Council has reason for not complying with such a request, the Council will, as soon as is reasonably practicable, give the TMO a written explanation.

6.2 At least 28 days before inviting tenders for the proposed **Major Works**, the Council will send to the TMO for approval details of:

- a) the Major Works proposed;
- b) the intended programme for the Major Works;
- c) the access arrangements required for the Major Works; and
- d) the contractors from whom the Council intends to invite tenders for the Major Works; and request the TMO to nominate contractors to be included on the tender list.
The Council will not refuse any such nomination without good reason.

6.3 Within 28 days of receiving tenders for the Major Works the Council will submit for the TMO's approval details of:

- a) the tenders received for the Major Works;
- b) the contractor or contractors whose tender or tenders the Council intends to accept for the Major Works; and
- c) the date upon which the contractor intends to commence the Major Works.

6.4 The Council will not commence Major Works without approval from the TMO. The TMO will not withhold or delay approval of the request from the Council for approval without good reasons.

6.5 The TMO will be kept fully informed of the progress of the works, invited to attend site meetings with contractors and council officers, and be given an opportunity to express its views throughout. On completion of the works, it will be invited to handover meetings and be asked for its views on the resolution of residual problems, in accordance with the provisions of Schedule 2.

6.6 This clause is subject to the provisions of clause 7, and in a case falling within clause 7 the Council will consult the TMO throughout all stages of the process leading to a Partnering Contract between the Council and a third party for the carrying out of Major Works which affect the Property.

7 Partnering Contracts made by the Council with third parties in respect of Major Works

- 7.1 The provisions of clause 6 do not prevent the Council from entering into a Partnering Contract for the carrying out of Major Works by third parties, and the provisions of that clause do not apply in so far as they are not compatible with the arrangements made by the Council and the third party.
- 7.2 Where the Council proposes to enter into such a Partnering Contract which affects the Property, it will consult with and involve the TMO at an early stage and throughout the process and give proper regard to the views of the TMO at all stages.

8 Replacement Repairs

- 8.1 Unless a repair is specifically included within Option C of clause 6 or within Option D of that clause, the Council will be under an obligation to replace and renew (whether as part of a planned maintenance programme or otherwise) all component parts of Property dwellings which:
- a) have deteriorated to the extent that repair would be ineffective and uneconomic;
 - b) require replacement to ensure the safety of persons using the Property dwellings; or
 - c) require replacement or renewal as part of the modernisation or improvement of the Property dwellings
- 8.2 The TMO and the Council will determine whether a case falls within paragraph a) of clause 8.1, in accordance with the procedure set out in Schedule 1.

9 Repairs Covered by the Council's Buildings Insurance

(Option C: The TMO makes claims for repairs which are covered by the Council's buildings insurance policy and carries out the repairs if they are included in the repairs listed in Annex A to Schedule 1 (TMO repairs).)

- 9.1 The TMO agrees to administer all insurance claims for Insurance Repairs to the Property which arise from events (such as storm damage, subsidence, fire damage, damage caused by burglary or vandalism and consequential damage caused by flooding, burst or leaking pipes) which are covered -by the risks the Council has insured against as set out in clause 7 of Chapter 1.
- 9.2 As soon as practicable after the Starting Date the Council will provide the TMO with a copy of its buildings insurance policy and a simple guide of the types of repairs which are classed as Insurance Repairs, including the procedures for making claims and the Council's procedure for approving repairs that would be Insurance Repairs if the Council had not elected to cover them itself (Chapter I, clause 7.2). The arrangements for undertaking Insurance Repairs are set out in Schedule 5.

9.3 If the Council considers that a repair that falls within the list of repairs in Annex B to Schedule I is an Insurance Repair, the Council will immediately notify the TMO in writing of that fact and follow the procedure for carrying out Insurance Repairs set out in Schedule 5.

9.4 If the TMO receives a notice from the Council under clause 9.3 or is otherwise aware that an Insurance Repair is needed, it will follow the procedure for administering claims and carrying out any emergency temporary repairs set out in Schedule 5. Where the Insurance Repair is a repair which falls within the list of repairs in Annex A to Schedule 1, the TMO will follow the procedure for carrying out Insurance Repairs set out in Schedule 5.

10 Provision of Estate Services

(Option B: The TMO provides some or all Estate Services for the Property which are management functions of the Council under section 27 of the Housing Act 1985 providing that, where the TMO carries out some, but not all, of the Estate Services, the division of estate service functions is practicable)

10.1 The TMO agrees to provide the TMO's Estate Services listed in Annex A to Schedule 6 (**Functions and Performance Standards of the TMO and the Council in respect of Estate Services**) and to comply with the performance standards set out in that Schedule.

10.2 The TMO will inform the Council in writing if the TMO is unable to provide any of the TMO's Estate Services for seven days or more. The notice will inform the Council of the service the TMO is unable to provide, the period of time for which the service will be unavailable and the reason why the TMO is unable to provide the service. The Council will provide the services the TMO is unable to provide and bill the TMO accordingly.

Service of notice under this clause does not in itself end or alter the TMO's obligation under this Agreement to provide the TMO's Estate Services, but where the Council and the TMO agree that the TMO will not be able to resume provision of those services within a reasonable period, the Council may take over those services and reduce the Allowances accordingly.

10.3 The Council will provide all Estate Services not provided by the TMO in accordance with clause 10.1, including the services listed in Annex B to Schedule 6, and to comply with the performance standards set out in that Schedule

11 Technical Advice

11.1 The Council will provide the TMO with adequate access to technical advice to enable the TMO to carry out its obligations under this Agreement.

12 Right to Improve and Leaseholder Improvements

- 12.1 The TMO and Council agree to follow the Improvements Policy and Procedure set out in Schedule 7 if the Council or the TMO has been served with an Improvement Notice, requesting consent to make improvements served by either a tenant (who has the right to improve his or her dwelling under section 97 of the Housing Act 1985) or a leaseholder (who has the right to improve under the terms of the lease).
- 12.2 If the Council or, as the case may be, the TMO consider that consent for the improvement proposed in an Improvement Notice should be refused or granted subject to conditions, the Council or, as the case may be, the TMO will inform all parties in writing of the reasons for that decision in accordance with the time limits set out in the relevant legislation or, where no time limit is set, as soon as is reasonably practicable.

13 Right to Repair

- 13.1 If a tenant of a dwelling submits a **Right to Repair Claim** under the **Right to Repair Regulations** the Council and the TMO agree to follow the procedures set out in Schedule 8 (**Right to Repair Policy and Procedure**).
- 13.2 The TMO agrees to meet any claims under the **Right to Repair Regulations** for compensation for failure to carry out repairs it has agreed to carry out in accordance with clause 1.
- 13.3 The Council agrees to meet any claims under the **Right to Repair Regulation** for compensation for failure to carry out repairs it has agreed to carryout in accordance with clause 2.

Schedule 1	Functions and Performance Standards of the TMO and the Council in respect of Repairs
Schedule 2	Procedure for Consultation on Major Works
Schedule 3	Procedures and Performance Standards for entering into and supervising Major Works
Schedule 4	The TMO's Major Works Functions
Schedule 5	Procedure for Repairs Arising from Events Covered by the Council's Building Insurance
Schedule 6	Functions and Performance Standards of the TMO and the Council in respect of Estate Services
Schedule 7	Improvements Policy and Procedure
Schedule 8	Right to Repair Policy and Procedure

CHAPTER 3

RENT (INCLUDING TENANT SERVICE CHARGES)

Confidentiality and Procedures

- 1.1 The TMO will treat as strictly confidential all information in its possession about Rent accounts. Only the employees or officers of the TMO dealing with the management of Rent accounts will have access to Rent accounts records and information which are capable of revealing the identity of any tenant or leaseholder. Information given to a committee of the TMO which has overall oversight of the management of Rent accounts or to a general meeting of the TMO with such oversight will be provided in a manner that does not reveal the identity of any person in arrears. All information concerning Rent accounts will be used only for the purpose of managing Rent accounts and controlling arrears.
- 1.2 The **Arrears Prevention and Control Procedures** are set out in the Schedule.

2 Rent Collection from Tenants

(Option A: The Council collects rents.) [Link to clause 3. Options A and B and clause 9. Option A.]

- 2.1 The Council will collect Rents due from tenants of dwellings. For the purposes of this clause, Rent includes any charges made for the provision of services in accordance with clause 10 of Chapter 2

3 Rent Arrears Control

(Option A; The TMO has no involvement in Rent collection or Rent arrears management.)

- 3.1 The Council will manage **Rent** arrears.

4 Collection of Arrears due at the Starting Date

(Option A: The Council manages rent arrears.)

- 4.1 Clause not included.

5 Former Tenants' Arrears

(Option A: The Council manages the collection of the debts of former tenants.)

- 5.1 The Council will be responsible for the collection of debts from former tenants.

6 Housing Benefit Payments

6 *(Option A: The Council collects Rents and manages rent arrears.)*

6.1 Clause not included.

7 **Setting Rent Payable by Tenants**

7.1 The Council will set the Rents, applying the same formula as it applies in setting the rents for similar dwellings to the Property dwellings in its own housing stock and in accordance with the Council's Rent Setting Policy.

7.2 In setting the Rents the Council will not (unless required to do so by statute) take account of:

- a) the rental value of any improvements to the Property dwellings financed by the TMO out of the TMO's Surplus Fund, (see clause 10 of Chapter 5); or
- b) any other benefits which have or may come from the management of the **Property** dwellings by the TMO.

7.3 Where the TMO, after consultation with tenants, decides that additional services should be provided, or that additional services being provided should no longer be provided, the TMO may request the Council to make appropriate adjustments in the Rent and the Council will give reasonable consideration to all such requests. The Council will make appropriate adjustments in accordance with the provisions of Schedule 2 (**Tenant Service Charge Procedure**). If the TMO decides to add the provision of additional **Estate Services** to its management functions (clause 10 of Chapter 2), the cost for providing the services will be included in the tenant service charge in the Rents and included in the Allowances (Chapter 5, clause 1)

7.4 The Council will notify the TMO in writing of the Total Rent which the Council requires from the Property Dwellings for each Rental period.

7.5 The Council will set the Total Rent by:

- a) calculating the core rent and tenant service charge elements which the Council would charge for Property Dwellings by comparison with the core rent and tenant service charge elements charged for similar dwellings let on similar terms and conditions (see clause 7.1); and
- b) including the tenant service charge required by the TMO for additional services under clause 7.3.

7.6 The Council will give the TMO a written statement showing how the Total Rent has been calculated.

7.7 The core rent and tenant service charge elements will be set by the Council and the TMO in a way which complies with the obligations set out in sections 24(1) and 24(3) of the Housing Act 1985 (that rents are reasonable and proportionate) and takes account of all other relevant considerations.

8 Notification of Rent Changes

(Option A: The Council notifies tenants directly and notifies the TMO at the same time.)

8.1 The Council will give each tenant at least 4 weeks' written notice of change in his or her Rent, and at the same time give written notice to the TMO of those changes in Rent.

9 Payment to the Council of Rent due

(Option A: The Council continues to collect the rent.)

9.1 Clause not included.

10 Voids Allowances

(Option A: The TMO does not select tenants and does not collect rent or manage rent arrears.) [Links to Chapter 6, clause 3, Options A and B]

10.1 Clause not included.

11 Bad debts / write offs

(Option A: The TMO does not manage rent arrears.) [Link to Chapter 6, clause 3, Option A and B.]

11.1 Clause not included.

12 Voids and Rents Waivers

(Option A: The TMO does not select tenants and does not collect rent or manage rent arrears.) [Link to Chapter 6, clause 3, Options A and B.]

12.1 Clause not included.

Schedule 1 Rent Collection and Arrears Control Procedure
Schedule 2 Tenant Service Charge Procedure

CHAPTER 4

LEASEHOLDER AND FREEHOLDER SERVICE CHARGES

(This Chapter includes provisions on freeholders who have a legal obligation to pay for services, such as the upkeep of communal areas and communal aerials.)

1 Confidentiality and Procedures

- 1.1 The TMO will treat as strictly confidential all information in its possession about Service Charges accounts. Only the employees or officers of the TMO dealing with management of Service Charges accounts will have access to Service Charge accounts/records and information which are capable of revealing the identity of any leaseholder or freeholder. Information given to a committee of the TMO which has overall oversight of the management of Service Charges accounts, or to a general meeting of the TMO with such oversight, will be provided in a way that does not reveal the identity of any person in arrears. All information concerning Service Charges accounts will be used only for the purpose of managing Service Charges accounts and controlling arrears.
- 1.2 The TMO and the Council agree that Service Charges will be dealt with in accordance with the Service Charges Procedure set out in the Schedule.

2. Information

- 2.1 The TMO agrees to keep accurate information on the Service Charges for those services it provides to leasehold and freehold dwellings. The service charges will be calculated on an estimated and an actual basis in accordance with the terms of the leases or freehold transfers
- 2.2 Where the TMO and the Council have agreed under clause 3, Option B, that the TMO calculate **Service Charges**, send out **Service Charge** demands and collect **Service Charges**, the TMO will treat the obligations of the Council under sections 21 of the Landlord and Tenant Act 1985 (regular statements of accounts) and section 22 of that Act (inspection etc of documents) as its obligations, and act accordingly.

3 Service Charges : Calculation, sending of Demands and Collection

(Option A: The Council calculates all the service charges, sends service charge demands to leaseholders and freeholders and collects service charges.) [Link to clause 8, Option A and clause 9, Option A.]

- 3.1 The Council will -
- (a) calculate all **Service Charges** for the services provided to leasehold and freehold dwellings, set in accordance with the provisions of the lease or transfer;
 - (b) send service charge demands; and
 - (c) collect service charges.

- 3.2 The TMO will maintain its records and accounts books in such a way as will enable the Council to comply with its obligations under section 22 of the Landlord and Tenant Act 1985 (inspection etc. of documents) and for it to calculate Service Charges for services provided by the TMO.
- 3.3 The Council and the TMO will each ensure that all invoices and credit notes relating to the services provided by it have proper records and audit trails and comply with the provisions of the Schedule.
- 3.4 The Council will calculate the Service Charges within the periods set out in the Schedule and provide the TMO with a schedule of all such charges and calculations within the periods set out in the Schedule and at least 14 days before service charge demands are sent.

4 Ground Rents

(Option A : The Council sends ground rent demands and collects ground rents.) [Link to clause 8, Option A and clause 9, Option A]

- 4.1 The Council will send Ground Rent demands and collect Ground Rents.

5 Service Charge and Ground Rent Arrears

{Option A: The Council manages all Service Charge and Ground Rent arrears.} [Link to clause 9, Option A.]

- 5.1 The Council will manage all Service Charge and Ground Rent arrears, including recovery action in respect of all service charges, in accordance with the provisions of the Schedule.

6 Consultation provisions under the Landlord and Tenant Act 1985 relating to Service Charges where both the Council and the TMO provide services

(Option A : Both the Council and the TMO provide services, but it is the Council that complies with the consultation requirements.)

- 6.1 Both the Council and the TMO provide services, but the parties agree that it is the Council that will comply with the consultation requirements.

7 Supplementary provisions in relation to Clause 6

- 7.1 Each party will provide the other party with information in its possession required by the other party to fulfil that party's consultation requirements. The TMO will, in relation to consultation with tenants and leaseholders, treat the consultation requirements of sections 20 and 20ZA of the Landlord and Tenant Act 1985 and of regulations made under those sections as requirements directed at it.

8 Other provisions of the Landlord and Tenant Act 1985 relating to Service Charges

(Option A: The Council supplies regular statements of account under section 21 of the Landlord and Tenant Act 1985 and notices to accompany demands for Service Charges under section 21B of that Act.)

- 8.1 The Council will supply regular statements of account to tenants and leaseholders under section 21 of the Landlord and Tenant Act 1985, and notices to demands for Service Charges under section 21B of that Act in accordance with the provisions of those sections and of the regulations made under them
- 8.2 The TMO will provide information in its possession to the Council that is required by the Council to enable it to comply with the provisions of clause 8.1.

8 Payment of Service Charges and Ground Rent to the Council

(Option A: The Council collects all Service Charges and Ground Rents, and arrears.)

- 9.1 Clause not included.

10 Financial Incentives and Penalties in relation to Collection of Service Charge Arrears

- 10.1 Where the TMO manages service charge arrears, the Council and the TMO agree that the financial incentive and penalty scheme set out in the Schedule will operate.

The Schedule Service Charges Procedure

CHAPTER5

FINANCIAL MANAGEMENT

1 Calculation of Allowances

- 1.1 The Allowances to be paid by the Council to the TMO (whether directly or indirectly) under clause 2 are to be the aggregate of -
- a) the sums calculated in accordance with the method of calculation set out in the statutory guidance given by the Secretary of State set out in Right to Manage Guidance : Calculating Allowances for Tenant Management Organisations, [2005] utilising such data as are relevant for the purposes of the calculation; and
 - b) the amount (if any) for additional services included at the TMO's request in the Rent or Service Charge (see Chapter 3, clause 7 and Chapter 4, clause 3).
- 1.2 The amounts calculated in accordance with paragraph (a) of clause 1.1 and included under paragraph (b) of clause 1.1 are set out in Schedule 1 (Calculation and Payment of Allowances). These amounts will be adjusted annually in accordance with the statutory guidance given by the Secretary of State in Right to Manage Guidance: Calculating Allowances for Tenant Management Organisations [2005].
- 1.3 The Council will give the TMO at least three months' notice of the proposed change in the amount falling within paragraph (a) of clause 1.1 for the following financial year. Any change in the Allowances will come into effect from the beginning of the following Financial Year and will be implemented over such period as may be agreed by the TMO in accordance with the provisions of Schedule
- 1.4 At least two months before the beginning of each Financial Year the TMO will in writing inform the Council of the Allowance it calculates it requires falling within paragraph (b) of clause 1.1 for the coming Financial Year. The TMO will state the reasons for any increase or decrease in the amount it calculates it requires compared with the corresponding amount for the previous Financial Year.
- 1.5 Either party may seek a review of the Allowances being paid in accordance with clause 1.1 and the provisions of Schedule 1 and such a review will be conducted in accordance with the provisions of paragraph 3 of Schedule 1. Any change in Allowances following such a review will come into effect from the beginning of the following Financial Year and will be implemented over such a period as may be agreed by the TMO and the Council in accordance with the provisions of Schedule 1.

2 Payment of Allowances

(Option B: The Allowances are paid to the TMO.) [Link to clause 3, Option B; clause 4 Option B; clause 8, Option B; and clause 10, Option B.]

- 2.1 The Council will pay the TMO the Allowances in instalments in advance in accordance with the agreement between the Financial Procedures set out in Schedule 2.
- 2.2 Where this Agreement ends in the course of a Financial Year, the payable Allowance in respect of the period from the start of that Financial Year to the date this Agreement ends shall be the Allowances payable in respect of that Financial Year multiplied by $x/365$ (or, in the case of a leap year $x/366$), where x is the number of days from the start of that Financial Year to the last day this Agreement is in force.
- 2.3 Value Added Tax at the standard rate shall be charged to the Council on the Allowances payable to the TMO under this Agreement.

3 Payment of Management and Maintenance Costs and Administrative Expenses incurred by the TMO

(Option B: TMO has its own bank account and receives Allowances from the Council.) [Link to clause 4, option B.]

- 3.1 The TMO is authorized to incur Management and Maintenance Costs and administrative expenses in the exercise of its Management Functions under this Agreement. The TMO will act in accordance with the provisions of Schedule 2 for all payments of such costs and expenses.

4 The TMO's Banking Arrangements

(Option B: TMO has such accounts as it sees fit and notifies Council of account details.)

- 4.1 The TMO will open any bank or building society accounts as it considers necessary. The TMO will inform the Council of any bank or building society accounts it opens.
- 4.2 The TMO will inform the Council in writing of the names and addresses of persons authorised to act as signatories on the account and report any changes to those signatories at the time of change. Any cheque drawn on the TMO's account will require a minimum of two signatories.
- 4.3 The TMO will notify the Council in writing of the account name and number into which the Council is to pay the Allowances.

5 Financial Control and Accounting Standards

- 5.1 The TMO will conduct its financial affairs in accordance with the provisions set out in Schedule 2.
- 5.2 The TMO will account for income and expenditure in accordance with the accounting standards set out in Schedule 3 (Accounts and Audit).
- 5.3 The TMO will provide the Council with the following financial information:
- a) the TMO's budget for the coming Financial Year before the beginning of each Financial Year;
 - b) the TMO's quarterly revenue report within six weeks of the end of each quarter;
 - c) the TMO's accounts and balance sheet for the previous Financial Year audited by a qualified auditor within six months of the end of each Financial Year;
 - d) the TMO's auditor's management letter within one month of receipt; and
 - e) information on leaseholder charges, in accordance with the provisions of Schedule 3 as to how the information is to be provided and within which period it is to be provided.
- 5.4 The TMO's correspondence, files, books and records of accounts that relate to the management of the Property dwellings and the TMO's financial procedures manuals will be available to inspection for audit purposes by the Council's internal audit staff, the Council's external auditor, and the Audit Commission. Reasonable notice that such inspection is desired is to be given by the party desiring it.

6 Financial Year

[TMO's financial year should be the same as the Council financial year.]

- 6.1 The TMO's Financial Year will be from 1st April to 31st March of the following year.

7 Restriction on Investments

- 7.1 The TMO shall not, without the prior consent of the Council, invest surplus cash balances in any form of investment other than a secure short term deposit account. Any money so invested shall be capable of being withdrawn by the TMO giving not more than 3 months' notice of withdrawal.

8 Reserve Funds

(Option B: The TMO has bank account(s) to meet Management and Maintenance Costs.)

- 8.1 The TMO will set up a Reserve Fund to meet the following potential liabilities:
- a) anticipated costs in future years resulting from under-spending on repairs and services;

- b) known commitments for future work in addition to the Major Works Account (if any); and
- c) a contingency against costs arising from unforeseen circumstances

The TMO's auditor will certify any amount put into the Reserve Fund as an adequate amount to be put aside. The Reserve Fund will be shown on the TMO's balance sheet at the end of each Financial Year.

- 8.2 The Reserve Fund will be used to meet costs in enabling the TMO to exercise its Management Functions under this Agreement in relation to the potential liabilities mentioned in clause 8.1.
- 8.3 If a credit balance remains in the Reserve Fund when this Agreement ends the balance will be paid over to the Council

9 Major Works Account

(Option A: The TMO has no Major Works account.)

- 9.1 Clause not included.

10 Financial Report and Surplus Fund

(Option B: Management and maintenance costs are paid by the TMO.)

- 10.1 Within six months of the end of each Financial Year the TMO will produce audited Annual Accounts for the past Financial Year which show:
 - a) a statement of the TMO's income and expenditure;
 - b) the assets and liabilities of the TJVIO, other than items included under paragraph a);
 - c) the Major Works Account (if any);
 - d) the Reserve Fund (if any); and
 - e) the Surplus Fund provided for in this clause.
- 10.2 If the Annual Accounts show a surplus of assets over liabilities, the balance will be transferred to the Surplus Fund or the Reserve Fund, and the TMO will report on the Surplus Fund at its Annual General Meeting. The Surplus Fund will be shown on the TMO's balance sheet.
- 10.3 The Surplus Fund may be used by the TMO for any purpose permitted by the TMO's constitution and shall be used for producing audited accounts under clause 10.5.
- 10.4 Any balance in the Surplus Fund will be carried forward from one year to the next.

- 10.5 If this Agreement ends the TMO will, subject to clause 10.6, produce audited accounts as at the date on which this Agreement ends within three months of that date. The TMO will send a copy of these accounts to the Council within three days of their production.
- 10.6 If there is no Surplus Fund on the date this Agreement ends or the balance in the Surplus Fund is not sufficient to pay in full for the production of audited accounts, the accounts will be produced at the direction of the council.
- 10.7 If a Surplus Fund balance remains when this Agreement ends the Surplus Fund will be used as the TMO directs. The balance in the Surplus Fund can be Used by the TMO for any purpose permitted by the TMO's constitution.
- 10.8 The TMO will within 12 months of the end of this Agreement decide how the Surplus Fund balance is to be spent and inform the Council of its decision.
- 10.9 Where the TMO is wound up or dissolved, any of the Surplus Fund remaining after satisfaction of all the TMO's debts and liabilities will be disposed of in accordance with the TMO's constitution. The TMO will inform the council of the decision.

11 Loans to the TMO

- 11.1 The Council may provide the TMO a loan or an overdraft guarantee.
- 11.2 If the Council refuses a request from the TMO for assistance under this clause the Council will give the TMO written reasons for refusing the TMO's request.

12 Interest on late Payments

(Option B: The TMO and the Council agree to pay interest on late payments.)

- 12.1 The TMO agrees to pay interest on any late payment due to the Council under this Agreement. Interest will be paid at the base lending rate of the Nominated Bank from the date on which the payment was due to the date on which the Council receives the payment.
- 12.2 The Council agrees to pay interest to the TMO on the net amount of any late payment under Agreement. The net amount is the late payment less any rent collected and held by the TMO at the date the payment from the Council was due. Interest will be paid at the base- lending rate of the Nominated Bank from the date on which the payment was due to the date on which the TMO receives the payment.
- 12.3 The provisions of the Late Payment of Commercial Debts (Interest) Act 1998 shall apply to interest payments under this clause.

13 Set Off of Payments

(Option B: The Council and the TMO are entitled to deduct money owed from payments due.)

- 13.1 If any payment under this Agreement due from the TMO to the Council is late or withheld by more than one month the Council may, subject to clause 13.4, deduct the outstanding amount (together with interest due under clause 12) from any money owed to the TMO.
- 13.2 If any payment under this Agreement due from the Council to the TMO is late or withheld by more than one month the TMO may, subject to clause 13.4, deduct the outstanding amount (together with interest due under clause 12) from any money owed to the Council.
- 13.3 Interest on any payment under clause 12 will stop on the date that the right of set off is used.
- 13.4 No deduction under clause 13.1 or 13.2 shall be made unless at least two weeks' written notice by the party proposing to make the deduction to the other party is given.
- 14 Registration for VAT**
- 14.1 The TMO will comply with the legal requirements to register with HM Customs and Excise for Value Added Tax.

Schedule 1	Calculation and Payment of Allowances
Schedule 2	Financial Procedures
Schedule 3	Accounts and Audit

CHAPTER 6

TENANCY MANAGEMENT

1 Information to Housing Applicants

- 1.1 The Council will provide information about TMOs in its literature.
- 1.2 The TMO will provide the Council with an information leaflet about what it is and what it does.
- 1.3 The Council will give housing applicants the opportunity to state if they would like to be housed in a Property dwelling.
- 1.4 The procedure for introductory meetings for applicants is set out in Schedule I (Introductory Meetings for Housing Applicants).

2 Consultation between the TMO and the Council

- 2.1 The Council will consult with the TMO before adopting or altering its allocation scheme under section 167 of the Housing Act 1996.
- 2.2 The TMO may at any time make suggestions to the Council about alterations to the Council's allocation scheme under section 167 of the Housing Act 1996, and may, in particular, put forward detailed proposals in relation to a Local Lettings Policy being operated by the Council as part of its allocations scheme.
- 2.3 The Council undertakes to give serious consideration to all suggestions and proposals made by the TMO under clause 2.2.
- 2.4 The TMO will consult with the Council in respect of any application falling under clauses 12 to 18 that requires the resolution of complex issues of law or fact.
- 2.5 The TMO may, if the Council so requests, monitor the operation of a Local Lettings Policy as it relates to the Property dwellings, and where the TMO does carry out such monitoring, it will keep the Council informed of its findings.
- 2.6 The TMO will assist the Council in the development of the Council's Anti-Social Behaviour Policies and Procedures and will operate the procedures, with particular reference to the sharing of information, the handling and monitoring of complaints, and dealing appropriately with anti-social conduct.
- 2.7 The Council will assist the TMO to liaise with the Crime and Disorder Reduction Partnership, to ensure that the manner in which the TMO performs its functions under this Agreement links with the Partnership and the strategy for addressing crime and disorder under Section 6 of the Crime and Disorder Act 1998.

3 Selection of Tenants of vacant Property dwellings

3 *(Option A: The Council selects tenants of vacant Property dwellings in accordance with its published allocation scheme, with no involvement on the part of the TMO.)*

3.1 The Council will allocate vacant Property dwellings in accordance with its published allocation scheme, with no involvement on the part of the TMO.

3.2 Where a person has been selected as a tenant of a vacant Property dwelling, the Council will carry out all the necessary administrative procedures prior to the grant of the tenancy in accordance with the provisions of Schedule 2 (Selection of Tenants Policy and Procedure).

3.3 The tenancy granted by the Council will be in the form of the Tenancy Agreement set out in Annex A to this Chapter.

4 Transfers

4 *(Option A: The Council administers all applications for transfer.)*

4.1 Where a tenant of a Property dwelling applies for a transfer to another dwelling, whether or not that dwelling is one which is within the scope of this Agreement, the Council will carry out all the administrative tasks, and conduct all the investigations that are required before a transfer application can be approved, and will provide all reasonable assistance to the tenant.

5. Introductory Tenancies

(Option B: The Council monitors Introductory Tenancies.) [Can only be chosen if the Council has Introductory Tenancies]

5.1. The Council will monitor Introductory Tenancies in accordance with the procedure set out in Schedule 3 (Introductory Tenancies).

6. Variations to the Tenancy Agreement

(Option B: Variations to the terms of a tenancy may be initiated by the Council or the TMO.)

6.1. The Council or the TMO can propose change (other than changes to Rent, Chapter 3, clause 7) to the terms of the Tenancy Agreement by serving on the other party a written Tenancy Variation Notice detailing the changes proposed.

- 6.2. A Tenancy Variation Notice will be served at least 56 days in advance of the date on which it is intended to serve a preliminary notice of variation on secure tenants required by section 103(2) of the Housing Act 1985.
- 6.3. If a Tenancy Variation Notice is served on the Council by the IMO the Council will within 28 days of receipt of the notice:
- a) consent in writing to the changes proposed by the TMO;
 - b) amend the TMO's proposed changes, giving written reasons for the amendments, and consent in writing to the amended changes; or
 - c) inform the TMO in writing of the Council's rejection of the changes proposed and the reasons for the rejection.
- 6.4. If the Council serves a Tenancy Variation Notice on the TMO, the TMO may within 28 days submit its views in writing to the Council on the change(s) proposed. The Council will give a reasoned written response to the TMO's views before serving the preliminary notice of variation of tenancy on secure tenants.
- 6.5. If the Council proposes changes, it will carry out the tenant consultation and service of notices in accordance with the provisions of section 103 of the Housing Act 1985 and the provisions set out in Schedule 4 (Tenancy Agreement Changes Procedure).
- 6.6. If the TMO proposes changes and the Council has consented to those changes, the TMO will carry out the tenant consultation and service of notices in accordance with the provisions of section 103 of the Housing Act 1985 and the provisions set out in Schedule 4.
- 6.7. If, where the TMO has proposed changes, the majority of secure tenants do not wish for the TMO to represent them during the consultation process under section 103 of the Housing Act 1985, the secure tenants may choose another body to represent them during that consultation process.
- 6.8. The new Tenancy Agreement with the date that it comes into effect will then be substituted for the former Tenancy Agreement at Annex A.

7 Breach of a tenancy agreement, term of a lease, or covenant in a freehold transfer

(Option A: The Council serves notices at the TMO's request but has discretion not to serve notices.)

- 7.1. In carrying out its housing management functions under this agreement, the TMO will adopt recommended good practice, having regard to the guidance published by the Chartered Institute of Housing and the Audit Commission.
- 7.2. If the TMO considers that, on a ground other than Rent or Service Charge anears:

- a) a tenant is in breach of the tenancy;
- b) a leaseholder is in breach of the lease; or
- c) a freeholder is in breach of a covenant in the freehold transfer, the TMO may serve a written Notice of Breach on the Council requesting the Council to serve a notice or take such other action as the TMO considers appropriate in accordance with the provisions of Schedule 5 (Breach of tenancy agreement, term of a lease, or covenant in a freehold transfer).

7.3 The TMO will not serve a Notice of Breach on the Council unless the TJVIO has taken reasonable steps to remedy the alleged breach. If the steps taken by the TMO have not been effective, it will explain the reasons why they have not been effective in the Notice of Breach served on the Council under clause 7.2.

7.4 Where the TMO serves a Notice of Breach, it will provide the information and assistance necessary for the Council to fulfil its obligations under this clause.

7.5 On receiving a Notice of Breach the Council will either:

- a) serve the notice or take the action requested by the TMO; or
- b) refuse the TMO's request.

7.6 If the Council agrees to the TMO's request, it will take all reasonable steps to secure a remedy of the breach or proceed with the action requested by the TMO in the Notice of Breach.

7.7 If the Council refuses the TMO's request, the Council will within seven days inform the TMO of its decision and the reasons for it

7.8 If the TMO considers its request has been unreasonably refused the provisions of clause 18 of Chapter 7 apply

7.9 Where the Council has not received a Notice of Breach from the TMO, it will not take any of the actions mentioned or referred to in this clause without consulting the TMO on the action proposed and the reasons for it.

8 Anti-social Behaviour and Harassment

8 *(Option A: The Council deals with anti-social behaviour and harassment.) [Must be used if clause 9 Option A is chosen.]*

8.1 The Council will investigate all complaints of anti-social behaviour and harassment, including in particular harassment on grounds of race, sexuality, religion or disability, which affect any resident of a Property dwelling, in accordance with the provisions set out in Schedule 6 (Anti-Social Behaviour and Harassment Policy and Procedure). The Council will use the same policy and procedures that it applies to cases of anti-social behaviour and harassment affecting residents in other properties owned by the Council.

- 8.2 The TMO will inform the Council of any complaint or incident of anti-social behaviour or harassment that has come to its notice within 3 working days of its having come to its notice.

9 Residents' Disputes

9 *(Option A: The Council deals with disputes.)*

- 9.1 The Council will deal with disputes between lawful residents of Property dwellings. The Council will operate the same policy and procedures that it operates when dealing with such disputes involving other properties owned by the Council.

10 Unlawful Occupation

(Option A: The Council takes action to end unlawful occupation. The TMO notifies the Council of suspected unlawful occupation.)

- 10.1 The TMO will inform the Council in writing, providing evidence, if the TMO considers that a Property dwelling is sublet without consent or occupied by persons who have no legal right to live in the dwelling.
- 10.2 On receiving a report from the TMO that a dwelling is unlawfully occupied, the Council will investigate, and inform the TMO of the progress of the investigation every 28 days.\
- 10.3 If, having carried out the investigation, the Council decides that the dwelling is unlawfully occupied, the Council will take such legal action as may be necessary to end the unlawful occupation.

11 Void Dwellings

(Option B: The TMO manages void dwellings.)

- 11.1 The TMO will inform tenants that tenants wishing to end their tenancy should inform the TMO and will manage any Property dwelling that becomes and remains vacant for any reason.
- 11.2 The TMO will take such actions as may reasonably be necessary to secure a vacant dwelling against unlawful occupation and to protect it from damage and deterioration.
- 11.3 If repairs are needed to any vacant dwelling to make the dwelling fit for re-letting or for any other purpose, each of the repairs required will be carried out by the TMO or, as the case made by the Council; in accordance with whichever party has the obligation to carry out the repair in question under Chapter 2 of this Agreement.

12 Right to Exchange

12 *(Option A: The Council administers the Right to Exchange.)*

- 12.1 The Council will administer applications to exercise the Right to Exchange under section 92 of the Housing Act 1985, in accordance with the provisions of Schedule 8 (Mutual Exchanges Policy and Procedure).

13 Right to assign to restricted category of persons

13 *(Option A: The Council administers the assignment)*

- 13.1 The Council will administer applications for voluntary assignments of secure tenancies, under section 91 of the Housing Act 1985, to persons who would be qualified to succeed to the tenancy if the tenant had died immediately before that assignment, in accordance with the provisions of Schedule 9 (Voluntary Assignments: Policy and Procedures)

14 Applications to Sublet

14 *(Option A: The Council administers applications from tenants to sublet.)*

- 14.1 The Council will process and, where appropriate, approve applications for subletting from secure tenants of Property dwellings made under section 93 of the Housing Act 1985.
- 14.2 The Council will, in deciding whether to give consent to subletting, act in accordance with the provisions of Schedule 9 (Subletting Policy). The Council will, on request, provide any tenant of a Property dwelling with full details of the current Subletting Policy free of charge.

15 Right of Succession

15 *(Option A: The Council administers the Right of Succession.)*

- 15.1 The Council will administer any Claim to the Right of Succession of a person claiming he or she is qualified to succeed to the tenancy of a Property dwelling under sections 87 to 90 of the Housing Act 1985. A copy of the Council's policy for administering such claims is set out in Annex B, and is available free of charge from the Council.
- 15.2 If the Council receives a Claim to the Right of Succession, it will within 14 days of receiving the claim inform the TMO in writing that the claim has been made.
- 15.3 If the Council accepts a Claim to the Right of Succession it will inform the person or persons who made the claim in writing that it accepts the claim and at the same time inform the TMO in writing that the Claim to the Right of Succession has been accepted and the name of the person who has succeeded to the tenancy.

16 Giving Consents

16 *[Both the TMO and the Council have giving of consent functions.]*

- 16.1 The Council will consider applications for consent from tenants or leaseholders of Proper dwellings and give or, as the case may be, refuse consent in respect of the matters listed in paragraph 1 of Schedule 10 (Giving Consents).
- 16.2 The TMO will consider applications for consent from tenants or leaseholders of Property dwellings and give or, as the case may be, refuse consent in respect of the matters listed in paragraph 1 of Schedule 10.
- 16.3 Where consent is required in respect of a matter that is not listed in Schedule 10, the TMO and the Council will agree as to which of them should consider the application, and Schedule 10 will be amended accordingly in accordance with the provisions of clause 18.1c) of Chapter 1.
- 16.4 Where the TMO and the Council are unable to reach agreement under clause 15.3, the provisions of clause 18 of Chapter 7 will be applied.

17 Right to Buy and Sales

17 *(Option A: The TMO does not collect Rent or manage Rent Arrears.)*

- 17.1.1 The Council will consult the TMO about the general terms and conditions of sale of Property dwellings. The Council will also:
- a) provide the TMO with a copy of the terms and conditions of sales; and
 - b) give the TMO not less than one month's advance written notice of any proposed change to the terms and conditions of sales.
- 17.1.2 The TMO may request the Council to alter any of the terms and conditions of sale which directly affect the TMO's exercise of its management functions under this Agreement. The Council will not refuse to make or delay in making the alteration requested without good reason.
- 17.2 If a tenant serves notice claiming to exercise the Right to Buy, the Council will within 14 days of receiving such notice inform the TMO in writing that the notice has been received. The Council will keep the TMO informed of the progress of the claim at each major stage.
- 17.3 Within 14 days of receiving a written request from the Council, the TMO will supply any information the Council may reasonably require in order to comply with its obligations under Part 5 of the Housing Act 1985.
- 17.4 The Council will give the TMO at least seven days' notice in writing of the expected date of the sale of any Property dwelling under Part 5 of the Housing Act 1985.

18 Right to Buy : Enquiries before Exchange of Contracts

(Option A: The Council deals with pre-contract enquiries.)

18.4 The Council will deal with enquiries before exchange of contracts.

18.5 The TMO will provide the Council with such relevant information as it possesses to assist the Council in answering enquiries before exchange of contracts.

19 Use of the Property

19.1 The TMO will obtain the written consent of the Council before it:

- a) permits any property dwelling to be used other than as a private dwelling;
- b) grants to the occupiers of any land or buildings which adjoins any part of the Property any right to use any part of the Property or services in or under any part of the Property or admit any claim to such a right;
- c) sells or permits the sale of alcohol anywhere in the Property;
- d) displays or permits the display of any advertisement anywhere in the Property; or
- e) permits any other areas within the Property to be used for other than their original purpose at the Starting Date.

19.2 The TMO will obtain written consent from the Council before it rehabilitates, modernises, alters, or improves any existing structure forming part of the Property or constructs any new building. This consent will not be withheld without good reason.

Schedule 1	Introductory Meetings for Housing Applicants
Schedule 2	Selection of Tenants Policy & Procedure
Schedule 3	Introductory Tenancies
Schedule 4	Tenancy Agreement Changes Procedure
Schedule 5	Breach of tenancy agreement, term of a lease, or covenant in a freehold transfer
Schedule 6	Anti-Social Behaviour and Harassment Policy and Procedure
Schedule 7	Resident's' Disputes Policy and Procedure.
Schedule 8	Mutual Exchanges Policy And Procedure
Schedule 9	Sub-Letting Policy

Arden TMO

Schedule 10 Giving Consents
Schedule 11 Right To Buy: Enquiries before Exchange of Contracts

Annex A The Tenancy Agreement
Annex B Succession Policy

CHAPTER 7

STAFFING AND MANAGEMENT OF THE RELATIONSHIP BETWEEN THE TMO AND THE COUNCIL

Note on clause 1 and TUPE

In any particular set of circumstances, TUPE (the transfer of undertakings protection of employment provisions set out in the Transfer of Undertakings (Protection of Employment) Regulations 1981) will or will not apply, depending on the facts of the case and the applicable law. Accordingly, it is not possible for the TMO and the Council to freely choose whether or not TUPE applies: rather, it is a matter of deciding whether it does or does not apply. It is only in the most exceptional circumstances that TUPE will not apply. Accordingly, there are three possible scenarios -

- (i) TUPE does not apply;*
- (ii) TUPE applies but there is no actual transfer of staff from the Council to the TMO;*
- (iii) TUPE applies and there is a transfer of staff from the Council to the TMO. .*

Where scenario (i) or (ii) applies, there is no need for an individual Agreement to make any provision. Accordingly, only scenario (iii) is dealt with, in clause 1 below.

1 The transfer of staff from the Council to the TMO where there is a transfer of an undertaking by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 1981

[to be used only where TUPE does not apply and there is no transfer of staff from the Council to the TMO.]

1.1 Clause not included.

2 Employment of Staff (other than those transferring under clause 1)

2.1 The duties of any staff employed by the TMO and their terms and conditions of employment (including salaries and rates of pay) will be decided by the TMO. The TMO's recruitment policy, disciplinary procedures, and standard terms and conditions for staff are set out in the Annex.

2.2 In employing the Staff the TMO will comply with:

- a) the TMO's Equal Opportunities Policy and Procedures (see chapter 1 clause 10), and
- b) the obligations imposed by statute.

3 Secondment of Council Staff to the TMO

(Option A: Secondment option is not chosen.)

3.1 Clause not included

4 Employment of Contractors

(Option B: The TMO establishes its own list of approved contractors.)

4.1 The TMO will establish a TMO's Approved List of contractors to provide the services the TMO considers it needs to contract out in order to fulfil its obligations under this Agreement. The TMO will not enter into a contract with any contractor who is not on the TMO's Approved List.

4.2 The TMO will only appoint contractors to the TMO's Approved List who:

- a. have the capacity to do work required by the TMO to an acceptable standard of quality;
- b. have adequate public and employer's liability insurance, or professional indemnity insurance if appropriate;
- c. give the TMO an undertaking to comply with obligations imposed by statute;
- d. if they are to repair or service electrical installations, are registered with the National Protection Council for Electrical Installation Contractors or another equivalent body in another Member State of the European Union; and
- e. if they are to service or install gas appliances, are registered with the Council for the Registration of Gas Installers or another equivalent body in another Member State of the European Union.

4.3 The TMO will only enter into a contract for management, support, repairs or other services, or for Major Works, with a contractor on the TMO's Approved List.

4.4 The Council may request the TMO to include a contractor on the TMO's Approved List, and inclusion in response to such a request will not be refused or delayed without good reason. If the TMO refuses to include a contractor requested by the Council on the TMO's Approved List the TMO will notify the Council in writing of the reasons for the refusal.

4.5 The Council may request the TMO to remove a contractor from the TMO's Approved List. The request will be in writing and will state the reasons why the Council considers that the contractor should be removed from the TMO's Approved List. The TMO will give proper consideration to a request from the Council and will within three months of receiving the request inform the Council in writing of the TMO's decision. If the TMO decides not to remove the contractor from the TMO's Approved List, the TMO will give the Council written reasons for the TMO's decision

- 4.6 In any case where EU Directive 77/62 (award of public supply contracts), 71/305 (award of public works contracts), or 92/50 (award of public service contracts) ("a public contract Directive") applies, the provisions of this clause will not apply to the extent that they are incompatible with obligations arising under a public contract Directive, or with measures implementing a public contract Directive in the United Kingdom.

5 Access to Council Officers

- 5.1 The Council will ensure the TMO has access to all the Council officers with whom the TMO requires or is likely to require contact in order to fulfil its obligations under this Agreement. A List of Council Officers will be sent to the TMO by the Starting Date and updated when necessary.

6 Liaison Officers

- 6.1 On or before the Starting Date the Council will nominate an officer from the staff concerned with the management of the Council's housing to be the Liaison Officer between the Council and the TMO. The Liaison Officer will be the TMO's first point of contact on day-to-day matters Concerning the operation of this Agreement and the obligations of the TMO and the Council under this Agreement. Any changes to the work of the liaison officer will be with the agreement of both parties. The role and the responsibilities of the Liaison Officer are set out in Schedule 3 (Liaison Officer Role and Responsibilities).
- 6.2 The Council may by written notice to the TMO change the Liaison Officer.
- 6.3 If invited to do so by the TMO, the Liaison Officer may attend and speak (but not vote) at all meetings of the TMO, its committees or sub-committees. The TMO will send the Liaison Officer copies of all agendas, papers and minutes of general meetings, committee meetings and sub-committee meetings.
- 6.4 The Council will be open and accountable in all dealings concerning the TMO and the operation of this Agreement except where this would involve a breach of confidentiality or contravene the Data Protection Act 1998.
- 6.5 By the Starting Date the TMO will nominate either a member of the Management Committee or a member of staff to be the TMO Liaison Officer. The TMO Liaison Officer will be the Council's first point of contact on day-to-day matters concerning the operation of this Agreement and the obligations of the TMO and the Council under this Agreement
- 6.6 The TMO may change the TMO Liaison Officer by written notice to the Council.

7 TMO Liaison Committee

[A TMO Liaison Committee meets to discuss strategic issues and general policy concerning TMOs and not the performance of individual TMOs.]

7.1 Where there is more than one TMO managing the Council stock, the Council will establish a Joint TMO Liaison Committee. The Council will decide the terms of reference of the TMO Liaison Committee, after consultation with the TMOs managing the Council's stock and the Committee will meet at least twice a year. The Council will decide which elected councilors or officers will represent the Council as the Council's Representatives on the TMO Liaison Committee.

7.2 The TMO Liaison Committee will discuss strategic issues and matters of general policy that relate to TMOs, but not the performance of individual TMOs.

7.3 The TMO may send representatives to each meeting of the TMO Liaison Committee

7.4 The TMO will be entitled to meet the Council's Representatives other than at a TMO Liaison Committee meeting at least once a year.

8 The Council's Nominee

8 *(Option A: Council does not have nomination rights)*

8.1 Clause not included.

9 Help to the TMO

9.1 The Council will consider all written requests made by the TMO for help in carrying out any of the obligations of the TMO under this Agreement.

9.2 Where a request for help is made by the TMO under this clause the Council will consider the TMO's request and give the TMO written notice of the Council's decision within 21 days of receipt of the request, and:

- a) if it is within the power of the Council and the Council is reasonably able to do so, grant the TMO's request, subject to such terms and conditions (including payment) as the Council may reasonably require; or
- b) if it refuses the request, give reasons why the Council cannot grant the request in its written notice.

9.3 Where the Council agrees to a request for help, the terms and conditions will be confirmed in writing between the Council and the TMO.

9.4 The Council agrees to respond to all correspondence from the TMO on matters other than those falling within clause 9.1 within a period that is reasonable for the item of correspondence concerned

10 Service of Notices

- 10.1 Any notice served by the Council or the TMO under the following clauses:
- a) Chapter I, clause 19 (notices relating to failure to perform);
 - b) Chapter 1, clause 20 (notices relating to the ending of this Agreement);
 - c) Chapter 3, clause 3 (notices relating to rent arrears control); and
 - d) this Chapter, clause 18 (notices relating to dispute or arbitration); and
 - e) Chapter 6, clause 16 (notices relating to Right to Buy applications)

Will either be served by hand and receipt acknowledge by the Councils nominated Liaison Officer (or in the Liaison Officers absence by a more senior officer) or be sent recorded delivery post to the Councils' offices or, as the case may be, to the TMOs registered office.

- 10.2 All other written notices may be served by post, and service is deemed to be affected by properly addressing, prepaying and posting a letter containing the notice and to have been effected at the time at which the letter would have been delivered in the ordinary course of post. In the event of a dispute arising as to the service of a notice the burden of proof of posting will rest with the sender
- 10.3 Except for the notices mentioned in clause I 0.1, any notice or letter which the TMO sends to the Council under the terms of this Agreement is to be sent to the Council's appropriate Chief Officer at the Council's Offices. Any notice or letter which Council sends to the TMO under the terms of this Agreement is to be sent to the Secretary of the TMO at the TMO's registered office.

11 Misdirected Notices

- 11.1 The TMO will within five working days pass on to the Council any notice or application concerning a Property dwelling served on the TMO in respect of a matter for which it does not exercise Management Functions under this Agreement.
- 11.2 The Council will within five working days pass on to the TMO any notice or application concerning a Property dwelling served on the Council in respect of a matter for which the TMO exercises management functions under this Agreement.

12 Notice of Legal Proceedings

- 12.1 The Council will within five working days notify the TMO of the commencement of any legal proceedings that may affect the exercise of the TMO's management functions under this Agreement and of every step that has been taken in such proceedings and the outcome of each such step.

- 12.2 The TMO will within five working days notify the Council of the commencement of any legal proceedings that may affect the Council as owner of the Property and of every step that has been taken in such proceedings and the outcome of each such step.

13 Information to be provided

- 13.1 The TMO will provide the Council with any information the Council may require in order to comply with the obligations imposed on the Council by law, including any information required the Audit Commission, District Auditor or the Council's Internal Auditor to carry out their duties.

- 13.2 The Council will provide the TMO with any information the TMO may reasonably request in order for it to carry out its Management Functions under this Agreement.

14 Changes in Management or Ownership

- 14.1 The Council will consult and involve the TMO at an early stage of any discussions or proposals to transfer or dispose of its interest in the whole or part of the Property or to transfer its management functions in respect of its housing stock to another provider, including any proposal to set up an Arms Length Management Organisation.

- 14.2 The TMO will inform the Council in writing as soon as possible if:

- a) the TMO resolves to investigate a transfer of ownership of the Property;
- b) the TMO resolves to be the nominee purchaser in an application made by the qualifying tenants under section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (leasehold enfranchisement) claiming to exercise the Right to Enfranchise.

- 14.3 The Council will inform the TMO in writing as soon as possible -

- (a) of the progress of a matter mentioned in clause 14.1;
- (b) if it receives any notice under section 13 of the Leasehold Reform Housing and Urban Development Act 1993 (leasehold enfranchisement) that any person is claiming the Right to Enfranchise.

15 Statutory Consultation

(Option A: The Council carries out statutory consultation.)

- 15.1 Subject to the provisions of clauses 6 and 7 of Chapter 4, the Council will carry out consultation with tenants or leaseholders required by statute ("statutory consultation").

16 Non-statutory consultation

16.1 The Council or the TMO may carry out such non-statutory consultation with the lawful residents of TMO Property dwellings as they consider desirable in relation to any matter within the scope of this Agreement.

16.2 Where the Council or the TMO wishes to carry out non-statutory consultation, it will inform the other party that it proposes to carry out such consultation, and the matters on which it wishes to consult. The other party will provide such information and assistance as the party carrying out the consultation may reasonably require.

16 Complaints about the TMO's or Council's Performance as Manager of the Property dwellings

17.2 If a tenant, leaseholder or freeholder makes a complaint about the performance of the TMO or the Council in managing the dwelling, the Management Complaint will be investigated in accordance with the Management Complaints Policy and Procedure set out in Schedule 4.

17.3 The TMO will provide the Council with the assistance and information it may reasonably require in dealing with a Local Government Ombudsman's investigation of a Management Complaint about the TMO's performance as manager of the Property.

18 Disputes and Arbitration

18.1 Subject to the provisions of clause 18.2, if a dispute between the Council and the TMO arises out of the operation of this Agreement, the Council or, as the case may be, the TMO may serve on the other party a Notice of Dispute, whether or not this clause is referred to in the relevant clause of the Agreement. The notice will state the nature of the dispute and the action the aggrieved party wishes the other party to take in order to resolve it.

18.2 Where a case falls within clause 19 of Chapter 1 (failure to perform), a Notice of Dispute may only be served -

- (i) by the TMO following the service of a Breach Notice on it by the Council;
- (ii) by the Council following the service of a Failure Notice on it by the TMO;
- (iii) where one party does not accept the reasons that have been given by the other party as to why, following service of the Notice, it is not able to comply with the requirements of the Notice.

18.3 *(Option 1: TMOs run by a Management Committee.)*

18.3 If the Council serves a Notice of Dispute on the TMO, the TMO will, within 14 days of receiving it, consider the dispute at a Management Committee meeting. The TMO will

inform the Council in writing of its response and the action (if any) it intends to take to resolve the dispute within seven days of the Management Committee Meeting.

Provisions common to Option I and Option 2

- 18.4 If the Council is not satisfied with the TMO's response to the Notice of Dispute, the Council may in writing -
- (a) request the TMO to give reasoned consideration as to whether the dispute could be settled by mediation or some other form of alternative dispute resolution and to respond in writing within seven days of the request; or
 - (b) request the TMO to convene a Special General Meeting to consider the dispute. The TMO will within seven days of receiving the request convene a Special General Meeting to be held on the earliest date which complies with the notice provisions of the TMO's constitution for such a meeting. The TMO will inform the Council of its final response and the action (if any) that it intends to take to resolve the dispute within seven days of the Special General Meeting.
- 18.5 If the TMO serves a Notice of Dispute on the Council, the appropriate Chief Officer of the Council will consider the dispute within 14 days of receiving the Notice of Dispute. The Council will inform the TMO in writing of its response and the action (if any) it intends to take to resolve the dispute within 21 days of receiving the Notice of Dispute.
- 18.6 If the TMO is not satisfied with the Council's response to the Notice of Dispute, the TMO may in writing -
- (a) request the Council to give reasoned consideration as to whether the dispute could be settled by mediation or some other form of alternative dispute resolution and to respond in writing within seven days of the request; or
 - (b) request the Council to consider the dispute at the next meeting of the appropriate Council body. The meeting will consider the dispute and will inform the TMO in writing of the Council's final response and the action (if any) that the Council intends to take to resolve the dispute within seven days of the meeting
- 18.7 The provisions of Schedule 5 (Alternative Dispute Resolution Procedure) will apply where a request has been made under clause 18(3)(a) or I 8(5)(a).
- 18.8 If after the above disputes' procedure has been followed the dispute remains unresolved or one party does not follow the dispute process, the Council or, as the case may be, the TMO may refer the dispute to arbitration under the Arbitration Act 1996, giving notice in writing to the other party.
- 18.9 Applications for arbitration will be made to the Chartered Institute of Arbitrators in accordance with the Arbitration Scheme in Schedule 6. The arbitrator will be appointed, and the arbitration procedure carried out in accordance with Schedule 6. The decision of the arbitrator will be binding on the TMO and the Council.

18.10 Nothing in this clause will limit the right of the Council or the TMO to pursue other lawful remedies, including ending this Agreement under clause 20 of Chapter 1, in the event of the Council or the TMO failing to carry out their respective management functions under this Agreement.

19 Information to the Secretary of State

19.1 The Council and the TMO will provide the Secretary of State with any information the Secretary of State may reasonably require about the TMO or the working of this Agreement.

Schedule 1	Staff Transferred under the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE)
Schedule 2	The Secondment Arrangements for Council Staff
Schedule 3	Liaison Officer Role and Responsibilities
Schedule 4	Management Complaints Policy And Procedure
Schedule 5	Alternative Dispute Resolution Procedure
Schedule 6	Arbitration Procedure
The Annex	the Recruitment Policy, Disciplinary Procedure & Standard Terms Conditions for Staff

CHAPTER 8

PERFORMANCE, MONITORING AND REVIEWING OF STANDARDS

1 The TMO's Performance Standards

- 1.1 In carrying out its management functions under this Agreement the TMO agrees to comply with the policies, procedures and performance standards set out in the Schedules to this Agreement.
- 1.2 To ensure that the TMO complies with the provisions of clause 1.1 the TMO agrees to set the TMO's Key Performance Indicators ("KPIs"), which enable the TMO to measure its performance against the standards it is required to achieve. The Key Performance Indicators will be set in accordance with the provisions of the Schedule.
- 1.3 The TMO agrees to provide information to enable the Council to meet the requirements of a Best Value authority under the provisions of Part 1 of the Local Government Act 1999 and orders made under that Part.
- 1.4 The TMO's Key Performance Indicators will:
- a) be set in consultation with the Council;
 - b) include the relevant national Best Value indicators;
 - c) take into account the length of time the TMO has managed the Property dwellings under this Agreement, the size of the TMO and any local circumstances which may affect performance;
 - d) broadly reflect the targets set by the Council for the management and maintenance of the comparator area specified in the Annex which is under the Council's direct management or managed by another organisation;
 - e) include targets set by the TMO to reflect local circumstances; and
 - f) include, at the Starting Date, the performance indicators listed in the Schedule, which can be varied as provided for in the Schedule.

2 The Council's Performance Standards

- 2.1 In carrying out its management functions under this Agreement the Council agrees to comply with the performance standards set out in the Schedules to this Agreement when carrying out, in relation to the Property, those of its management functions that are not, under this Agreement, being exercised by the TMO.
- 2.2 To demonstrate that the Council is complying with its obligations under clause 2.1 the Council will set out the Council's Key Performance Indicators, which enable the Council to measure its performance against the standards it is required to achieve.

2.3 The Council's Key Performance Indicators will be set in accordance with the provisions of the Schedule and can be varied as provided for in the Schedule.

3 Regular Monitoring and Development Meetings

3.1 The TMO will provide such information and access to records as the Council may reasonably need to monitor the TMO's performance

3.2 The Council will hold a Monitoring and Development Meeting with the TMO at least once every six months for the purposes of -

- (a) monitoring the performance of the TMO in carrying out its Management Functions under this Agreement;
- (b) monitoring the performance of the Council in carrying out its Management Functions under this Agreement.

Each party will provide the other party with sufficient information, including finance information and information on KPIs, no less than 14 days before the date of the meeting to enable monitoring to be properly carried out.

3.3 Following a Monitoring and Development Meeting, the Council will prepare a report which will evaluate the TMO's and its own performance and will send copies of the report to the TMO committee and feed the contents of the report into the Council's own internal monitoring arrangements.

3.4 The Council will ensure that the obligations imposed on the TMO under clause 3.2 are not so onerous as to prevent the TMO from fulfilling its obligations under this Agreement or to impair its ability to fulfil those obligations.

4 Annual Review

4.1 Within three months of the end of the Financial Year the TJVIO will produce a TMO's Performance Report for the previous Financial Year on the performance of the TMO and the Council in comparison with the Key Performance Indicators. Where the TMO requests the Council not to publish any indicator on the grounds that it may reveal confidential information about a tenant or employee, the Council will comply with the request if it is reasonable to do so in the particular circumstances of the case. The Council will provide the necessary information for the TMO to publish the TMO's Performance Report.

4.2 The TMO will send a copy of the TMO's Performance Report to the Council and to every tenant, leaseholder and freeholder. The TMO will also provide a copy to any person residing within the area of the Council upon payment of a reasonable charge.

4.3 Within three months of the publication of the TMO's Performance Report, the Council and the TMO will carry out an Annual Review by holding an Annual Review Meeting to review their respective performance and decide on the action needed to rectify any deficiencies in the TMO's or the Council's performance. Nothing in this

clause prevents the Council or the MO taking action for breach of this Agreement in respect of deficiencies in performance under clause 19 of Chapter 1

4.4 Within three months of the date of the Annual Review Meeting the TMO will produce a report of the meeting. This report will be presented to the TMO's AGM.

4.5 An Annual Review Meeting can take the place of a Monitoring and Development Meeting provided for in clause 3.

5 Equal Opportunities Monitoring

5.1 Each year the Council will monitor the effectiveness of the TMO's Equal Opportunities Policy and Procedures and report to the TMO's committee on its findings. The TMO will consider the report and make such changes as the Council may reasonably require ensuring that the TMO complies with implementing its Equal Opportunities Policy and Procedures (see Chapter I, clause I 0).

6 Best Value Reviews

6.1 Where the Council is carrying out either a Best Value review of its management functions which the TMO is exercising under this Agreement or a Best Value review of its TMOs, the TMO will:

- a) take part in the Council's review; or
- b) at the request of the Council, and if it so agrees, carry out the review of the Management Functions it is exercising under this Agreement and supply the Council with a written report of the review findings; or
- c) with the council's consent, carry out its own review of the Management Functions it is exercising under this Agreement at the same time as the Council is carrying out its review, and supply the Council with a written report of its review findings.

6.2 The Council agrees to meet any extra costs not included in the Allowances and reasonably incurred by the TMO under this clause

7 Five Year and Special Reviews

7.1 Subject to clauses 7.2 and 7.8, the Council will, at least once every five years and no more than once every two years, monitor the total performance of the TMO in carrying out its Management Functions under this Agreement by carrying out a Five-Year Review. In monitoring the TMO's performance the Council will pay particular attention to:

- a) the democratic standards of control and the compliance with the TMO's Rules or Memorandum and Articles of Association.

- b) the standards of implementation of the Equal Opportunities Policy and
- c) the general efficiency of the TMO's administration and the use of the TMO's Key Performance Indicators to demonstrate the achievement of (or failure to achieve) the performance standards required by this Agreement (see clause 1);
- d) the TMO's standards of financial control and its financial viability (see Chapter 5); and
- e) the allocation of vacant Property dwellings to housing applicants and the implementation of fair housing policies and good tenancy management (see Chapter 6).

7.2 Where a Best Value review of the TMO's performance has taken place, the Council will be under no obligation to carry out a Five-Year Review for a further five years. The Council and the TMO agree that, whenever it is practicable to do so, a Best Value review, a Five-Year Review and an Annual Review should be combined.

7.3 As soon as may be practicable after completing the review the Council will produce a Review Report which will:

7.2.1 identify the deficiencies (if any) in the functioning or performance of the TMO;

7.2.2 make positive recommendations as to the action and practical steps which the TMO needs to take; and

7.2.3 set out the periods within which the Council considers that remedial action should be taken.

The Council will provide the TMO with a copy of the Review Report as soon as it is available.

7.4 Within two months of receipt of the Review Report the TMO will respond in writing to the Review Report setting out:

a) the recommendations for action which the TMO accepts, setting out the TMO's plan and periods within which those recommendations will be implemented.

b) the findings and recommendations (if any) with which the TMO disagrees, stating the reasons for the disagreement and the evidence relied upon as showing that the Council has reached incorrect conclusions.

7.5 If the TMO disagrees with the Review Report and responds to it under clause 7.4 b), the Council will, within one month of receiving the TMO's response, give reasoned consideration to the TMO's response and, in writing, either:

a) accept the TMO's response and amend the findings and recommendations for action in the Review Report or

- b) give reasons why the TMO's response is not accepted by the Council and require the TMO within one month, to submit its written plan for implementing the recommendations

7.6 If a disagreement remains between the Council and the TMO after the Council has given reasons in accordance with clause 7.5b) why it requires the recommendations in the Review Report to be implemented, the disagreement will be settled by using the procedure for settling disputes specified in clause 18 of Chapter

7.7 The Review Report will form the basis of the information presented to the tenants and leaseholders by the TMP before a decision under clause 17 of Chapter 1 as to whether the TMO is to continue as manager of the Property dwellings.

7.8 Where the Council has reason to believe that there are serious failings in the financial performance, management, or governance of the TMO, and that there is no realistic prospect of remedying the situation by taking action under any other provision of this Agreement, it may carry out a Special Review under the provisions of this clause even though the previous review took place within the last two years. The consent of the TMO is required that the persons proposed by the Council to carry out the Special Review may so act, but such consent is not to be unreasonably withheld.

7.9 The carrying out of a Special Review does not prevent the Council from taking action against the TMO for breach of this Agreement in respect of deficiencies in performance under clause 19 of Chapter 1.

The Schedule Key Performance Indicators
The Annex Comparators

CHAPTER 9

Chapter 9: Definition of Terms and Location of First Use of a Term

This Chapter provides definitions of the terms which are in **Bold Letters** in the text of this Agreement. The Chapter and clause reference given for each term locates where the term is first used in the Agreement.

Allowances

(Chapter 1, clause 18 - and see Chapter 5, clause 1)

The annual sum of money paid by the Council to the TMO to carry out the TMO's Management Functions under this Agreement. The Allowances are the aggregated sums calculated in accordance with the method of calculation set out in the Right to Manage Guidance: Calculating Allowances for Tenant Management Organisations and the amount for additional services included at the TMO's request.

Annual Accounts

(Chapter 5, clause 10, Option B)

The accounts and balance sheet produced by the TMO each year within 6 months of the end of the TMO's Financial Year.

Annual Review

(Chapter 8, clause 4)

Annual Review by the Council and the TMO of the TMO's and the Council's performance during the previous Financial Year.

Annual Review Meeting

(Chapter 8, clause 4)

The annual meeting between the TMO and the Council to review their respective performance.

Anti-Social Behaviour Policy and Procedures

(Chapter 6, clause 2)

The policies and procedures set out in the Council's Statement of Policies and Procedures on Anti-Social Behaviour as required by section 218A of the Housing Act 1996.

Anti-Social Behaviour and Harassment Policy and Procedure

(Chapter 6, clause 8, Option A)

The policy and procedure set out in Schedule 7 to Chapter 6 with which the TMO is to comply with dealing with cases of anti-social behaviour and harassment.

Application to Exchange

(Chapter 61 clause 12)

An application from a secure tenant who wishes to exercise the Right to Exchange under section 92 of the Housing Act 1985.

Approved Person

(Chapter 1, clause 18)

A person approved by the Secretary of State under the Right to Manage Regulations, to confirm the competence of the TMO to take on the range of Management Functions chosen.

Arrears Prevention and Control Procedures

(Chapter 3, clause 1)

The procedures agreed between the Council and the TMO that will be used for the prevention and control of Rent arrears and for managing cases of arrears

Best Value

(Chapter 8, clause 1)

The national performance regime to enable Councils to deliver continuous improvement in services, set out

Breach Notice

(Chapter 1, clause 19)

Written notice from the Council to the TMO that the TMO is in Breach of the Agreement because it is failing to exercise a management function or management task to the performance standards referred to in clause 1 of Chapter 8, or there has been a financial Breach by the TMO. A Breach Notice will normally only be served after failure by the TMO to implement an improvement plan.

Breach

(Chapter 6, clause 9, Option B)

A Breach of the terms in the tenancy, lease or freehold covenant.

Choice Based Lettings Scheme

(Chapter 6 clause 3, Option D)

A scheme introduced by the Council to allow people to apply for available local authority or housing association accommodation, which is openly advertised or, in some areas, is advertised only to those on the Council's waiting list.

Claim to the Right of Succession

(Chapter 6, clause 15)

A claim that a person is qualified to succeed to the tenancy of a dwelling under sections 87 to 90 of the Housing Act 1985.

Complaint

(Chapter 6, clause 9, Option B)

A written request from a resident to the TMO requesting the TMO to take action against a person with whom the resident is in dispute.

Consultation requirements

(Chapter 4, clause 6)

The requirements of sections 20 and 20ZA of the Landlord and Tenant Act 1985 in relation to Service Charges.

Contract Works Limit

(Chapter 7, clause 4, Option A)

The Contract Works Limit is £.10,000.

The TMO must let contracts above this amount to contractors from the Council's Approved List.

Council's Approved List

(Chapter 7, clause 4)

The lists of contractors approved by the Council for carrying out works in excess of the Contract Works Limit.

Council's Key Performance Indicators

(Chapter 8, clause 2)

The performance indicators set up by the Council to measure the standard of the Council's performance of its retained obligations under this Agreement.

Council's Offices

(Chapter 7, clause 10)

The offices of the Council to which all notices required by the Agreement which are sent by post, are to be sent.

The Director of Housing, Care of the Notices Office, Housing Services, Christopher Addison House, 72 Wilton Way, Hackney, London E8 1BJ

Council's Representatives

(Chapter 7, clause 7)

The elected councillors or officers representing the Council on the Liaison Committee.

Officers - Mr Conor McAvinchey and Mr. Brian Madden

Crime and Disorder Reduction Partnership

(Chapter 6, clause 2)

A statutory partnership formed in accordance with the provisions of the Crime and Disorder Act 1998 in every local government area.

Equal Opportunities Policy and Procedures

(Chapter 1, clause 10)

The TMO's Equal Opportunities Policies and Procedures set out in Schedule 2 to Chapter 1.

Estate Services

(Chapter 2, clause 10)

Services provided by the TMO or the Council in respect of an estate.

Failure Notice

(Chapter 1, clause 19)

Written notice from the TMO to the Council that the Council is not fulfilling one or more of its obligations in respect of Management Functions not being exercised by the TMO or its obligations under the Agreement.

Financial Procedures

(Chapter 5, clause 2)

The agreement between the Council and the TMO as to the Financial Procedures to be operated by the TMO, set out in Schedule 2.

Financial Report

(Chapter 5, clause 10, Option A)

The written statement of account prepared by the Council showing costs in comparison with the Allowances, provision for any other liabilities incurred by the TMO, and the Surplus Fund.

Financial Year

(Chapter 3, clause 9 - see Chapter 5, Clause 6)

The TMO's Financial Year will be from 1 April to 31 March of the following year. This should be the same as the Council's Financial Year.

Five Year Review

(Chapter 8, clause 7)

The review by the Council of the overall performance of the TMO every 2 to 5 years.

Float.

(Chapter 5, clause 3, Option A)

The amount which the Council provides as a cash Float to the TMO to meet administrative expenses.

Former Tenants' Arrears

(Chapter 3, clause 5)

The total amount of Rent arrears debts owed to the Council by former tenants at the Starting Date.

Ground Rent

(Chapter 4, clause 4)

An amount paid annually to the Council, as landlord, that is not related to the services provided.

Improvement Notice

(Chapter 2, clause 12)

A written notice from a tenant claiming the Right to Improve under the terms of Section 97 of the Housing Act 1985 or from a leaseholder seeking consent to improve under the terms of his or her lease.

Improvement Plan

(Chapter 1, clause 19)

Plan agreed by the Council and the TMO to improve the TMO's performance or prevent serious financial Breaches by it.

Improvements Policy and Procedure

(Chapter 2, clause 13)

The policy and procedure agreed between the Council and the TMO and set out in Schedule 7 to Chapter 2 where an Improvement Notice is served by a tenant or a leaseholder having a right to improve his or her dwelling.

Insurance Repairs

(Chapter 2, clause 9)

Repairs to dwellings arising from events that are covered by the Council's buildings insurance policy (such as storm damage, subsidence, fire damage, damage caused by burglary and consequential damage caused by flooding or burst or leaking pipes).

Introductory Tenancy

(Chapter 6, clause 5)

A tenancy granted for an initial, trial period of one year, during which it cannot become a secure tenancy.

Leaseholder

(Chapter 1, clause 2)

A person who has bought his or her house or flat without purchasing the freehold of the Property and is holding a lease of more than 21 years.

Local Lettings Policy

(Chapter 6, clause 2)

Policy setting out local lettings priorities for the TMO area which is included in the Councils published allocation scheme.

Liaison Officer

(Chapter 7, clause 6)

The officer from the Council who is nominated by the Council to be the day-to-day point of contact between the Council and the TMO. The Liaison Officer Role and Responsibilities are set out in Schedule 3 to Chapter 7.

Mr Conor McAvinchey

List of Council Officers

(Chapter 7, clause 5)

The names, addresses and telephone numbers of the officers of the Council whom the TMO may need to contact in order to fulfil its obligations under this Agreement.

Mr Conor McAvinchey and Mr Brian Madden Hackney Council
1st Floor, Clapton Neighbourhood Office
136 -142 Lower Clapton Road
London E5 OQD

0208 356 6027

Major Works

(Chapter 2, clause 6)

Cyclical redecoration and associated repairs, structural repairs, renewal of components, fixtures or fittings, and improvements to dwellings considered by the Council to be necessary or desirable.

Major Works Account

(Chapter 5, clause 9)

A bank account set up by the TMO in which that part of the Allowances paid in advance to fund Major Works is held.

Management and Maintenance Costs

(Chapter 5, clause 2)

Costs incurred by the TMO in exercising its Management Functions, including the carrying out of repairs.

Management Complaint

(Chapter 7, clause 17)

A complaint by a tenant, leaseholder or freeholder about the performance of the Council or the TMO in managing the Property.

Management Complaints Policy and Procedure

(Chapter 7, clause 17)

The written policy set out in Schedule 4 to Chapter 7, which sets out the arrangements for dealing with Management Complaints.

Management Functions

(Chapter 2, clause 1)

Management Functions exercised by the TMO under the Agreement in respect of the Property.

Modular Management Agreement

(Chapter 1, clause 4)

The approved form of management agreement required by the Right to Manage Regulations which an individual agreement must conform to.

Monitoring and Development Meeting

(Chapter 8, clause 3)

Meeting between the Council and the TMO held at least once every six months to Monitor the performance of the TMO and the Council in carrying out their Management Functions under this Agreement.

Net Rent

(Chapter 3, clause 9, option C)

The net amount of Rent due from the TMO to the Council at the end of each quarter, as shown in the Rent demand sent to the TMO by the Council.

Nominated Bank

(Chapter 5, clause 12)

Royal Bank of Scotland...(name of Bank)

The name of the Bank, the interest rate of which is used as the base for charging penalty interest payable on any late payment of money due under the Agreement.

Notice of Dispute

(Chapter 7, clause 18)

A written notice served either by the Council on the TMO or by the TMO on the Council stating that a dispute between the parties has arisen, the nature of the dispute and the action the aggrieved party wishes the other party to take in order to resolve it.

Notice of Breach

(Chapter 6, clause 7, Option A)

Written notice served by the TMO on the Council requesting the Council to take action for Breach of tenancy, lease, or freehold covenant (other than on the ground of arrears of Rent or Service Charge).

Partnering Contract

(Chapter 2, clause 7)

A contract for works entered into between the Council and a third-party partner, to carry out Major Works in the form of a partnering arrangement as set out in ODPM's national procurement strategy for local government.

Planned Maintenance Repairs

(Chapter 2, clause 1)

Cyclical and programmed repairs, including planned preventative repairs.

Property

(Chapter 1, clause 2)

The housing and other land listed in Schedule 1 to Chapter 1.

Property Dwelling

(Chapter 1, clause 2)

A dwelling listed in Schedule 1 to Chapter 1.

Rent

(Chapter 3, clause 1)

The Rent due from tenants including any charge for the provision of services.

Repair Notice

(Chapter 2, clause 3)

Written notice from the TMO to the Council that the Council is not carrying out a repair it has agreed to carry out or is within its repairing obligations as landlord, or written notice from the Council to the TMO that the TMO is not carrying out a repair it has agreed to carry out. The notice can also claim that the standards and timescales agreed are not being complied with.

Reserve Fund

(Chapter 5, clause 8, Option B)

The fund set up by the TMO to meet specified potential liabilities.

Residents' Disputes Policy and Procedure

(Chapter 6, clause 9, Option B)

Policy to be followed by the TMO following a Complaint by a lawful resident where the TMO does not consider that a Breach is involved.

Responsive Repairs

(Chapter 2, clause 1)

Repairs that cannot be planned or included in a repair programme, covering day to day repairs, group repairs, void repairs and minor works.

Review Report

(Chapter 8, clause 7)

The report produced by the Council on its completion of a Five Year Review or Special Review.

Right of Succession Notice

(Chapter 6, clause 15)

Notice sent by the TMO to the Council when it has received a Claim to a Right of Succession.

Right of Succession Policy

(Chapter 6, clause 15)

Policy operated by the Council in relation to the right of succession as set out in Annex B to Chapter 6.

Right to Buy

(Chapter 1, clause 18 - see also Chapter 6, clause 17)

The statutory Right to Buy, which secure tenants may exercise under the provisions of Part 5 of the Housing Act 1985.

Right to Enfranchise

(Chapter 1, clause 18 - see also Chapter 7, clause 14)

The statutory right of leaseholders under the Leasehold Reform Housing and Urban Development Act 1993 to enfranchise the freehold of the building in which their leasehold Property is situated.

Right to Manage

(Chapter 1, clause 18)

The rights exercisable by TMOs under the Right to Manage Regulations.

Right to Manage Regulations

(Chapter 1, clause 3)

The Housing (Right to Manage) Regulations 1994

Right to Repair Claim

(Chapter 2, clause 13)

claim made under the Right to Repair Regulations.

Right to Repair Regulations.

(Chapter 2, clause 13)

The local Housing Authorities (Right to Repair) Regulations 1994.

Secondment Arrangement

(Chapter 7, clause 3)

The arrangements in which local authority members of staff are seconded to the TMO as set out in Schedule 2 to Chapter 7.

Secure tenant

(Chapter 1, clause 17)

A tenant who has been granted a tenancy under section 79 of the Housing Act 1985.

Selection of Tenants Policy and Procedure

(Chapter 6, clause 3)

Policy and Procedure operated by the Council or the TMO in selecting tenants of a vacant Property dwelling, as set out in Schedule 2 to Chapter 6:

Service Charges

(Chapter 4, clause 1)

The amount payable by leaseholders and freeholders for services provided by the Council or the TMO within the meaning of section 18 of the Landlord and Tenant Act 1985.

Service Charges Procedure

(Chapter 4, clause 1)

The procedure for dealing with leaseholder and freeholder Service Charges as set out in the Schedule to Chapter 4

Special Review

(Chapter 8, clause 7)

A review that can be carried out by the Council if the Council has reason to believe that there are serious failings in the financial performance, management or governance of the TMO.

Starting Date

(Chapter 1, clause 5)

The Management Agreement starts on 1st November 05.

Starting Date Arrears

(Chapter 3, clause 4)

The amount owed by tenants in arrears at the Starting Date, which the TMO will need to collect.

Subletting Policy

(Chapter 6, clause 14)

The policy, set out in Schedule 10 to Chapter 6, in accordance with which applications from tenants to sub-let will be considered.

Supervision Notice

(Chapter 1, clause 19)

A notice served by the council on the TMO with the effect of restoring to the TMO exercise of functions which were specified in the Supervision Notice, from a specified date

Surplus Fund

(Chapter 5, clause 3, Option A - see also clause 10)

The surplus Fund is the efficiency savings made by the TMO. It is shown either on the financial Report prepared by the Council (if clause 10, Option A is used) or in the TMO's Annual Accounts and on its balance sheet (if clause 10, Option 8 is used).

Tenancy Agreement

(Chapter 3, clause 2)

The agreement setting out the terms and conditions of a tenancy for a dwelling as set out in Annex to Chapter 6.

Tenancy Variation Notice

(Chapter 6, clause 6)

Notice served by either the Council or the TMO on the other party proposing to vary the terms of the Tenancy Agreement.

Tenant

(Chapter 1, clause 2)

A periodic or fixed term tenant other than a leaseholder of a Property Dwelling.

TMO

(Title Page)

The tenant management organisation. A TMO is required to meet the conditions set out in regulation 1(4) of the Right to Manage Regulations.

TMO's Approved List

(Chapter 7, clause 4)

The list of contractors that are approved to enter into contracts with the TMO.

TMO Committee

(Chapter 7, clause 8)

A Committee of the TMO properly constituted under the TMO's Constitution.

TMO's Key Performance Indicators

(Chapter 8, clause 1)

The performance indicators set up in consultation with the Council to measure the " standard of the TMO's performance of its obligations under this Agreement.

TMO Liaison Committee

(Chapter 7, clause 7)

The Joint Liaison Committee established by the Council, where there is more than one TMO in its area, to discuss strategy issues that concern the TMOs in the local authority area.

TMO's Performance Report

(Chapter 8, clause 4)

The report produced within three months of the end of the Financial Year by the TMO, which compares the TMOs and the Council performance against their respective Key Performance Indicators.

TMO's Registered Office

(Chapter 7, clause 10)

The Registered Office of the TMO, which all notices required by the Agreement that are sent by post are to be sent.

16A Malcolm House,
Arden Estate,
Regan Way,
London N1 6PN.

Total Rent

(Chapter 3, clause 7)

A figure representing the Rent that the Council would charge if managing the Property, plus any additional tenant Service Charges required by the TMO.