

# This agreement

is made the 19th day of May 2015

BETWEEN THE LONDON BOROUGH OF LAMBETH  
*(called "the Council" in this Agreement)*

AND

WELLINGTON MILLS HOUSING CO-OPERATIVE  
*(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 will be replaced as amended. Clause 18(1)(f) 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 or as amended, to conform to this MMA.

# CONTENTS

## CHAPTER 1

### General Provisions of the Agreement

- Clause 1 Parties to the Agreement
- Clause 2 The Council and the Property
- Clause 3 The TMO
- Clause 4 Statement of Exercise of Management Functions under the Right to Manage
- Clause 5 Starting Date
- Clause 6 The TMO's Exercise of Management Functions
- Clause 7 Insurance
- Clause 8 Exclusion of section 27(13) of the Housing Act 1985 and General Indemnity
- Clause 9 Confidentiality
- Clause 10 Equal Opportunities
- Clause 11 Training
- Clause 12 Information to Tenants
- Clause 13 Conflicts of Interest
- Clause 14 Right to Represent
- Clause 15 Council's Right of Access to Dwellings
- Clause 16 Interpretation of this Agreement and General Provisions
- Clause 17 Decision to Continue this Agreement
- Clause 18 Variations to this Agreement
- Clause 19 Failure to Perform
- Clause 20 Ending this Agreement

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

### Repairs, Maintenance and Services Provision

- Clause 1 Functions of the TMO in respect of Responsive and Planned Maintenance Repairs
- Clause 2 Functions of the Council in respect of Repairs
- Clause 3 Failure to Repair
- Clause 4 Major Works: Initiation by the Council
- Clause 5 Requests for Major Works by the TMO
- Clause 6 Major Works
- Clause 7 Partnering Contracts made by the Council with third parties

- in respect of Major Works
- Clause 8 Replacement Repairs
- Clause 9 Repairs Covered by the Council's Buildings Insurance
- Clause 10 Provision of Estate Services
- Clause 11 Technical Advice
- Clause 12 Right to Improve and Leaseholder Improvements
- Clause 13 Right to Repair
  
- 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)

- Clause 1 Confidentiality and Procedures
- Clause 2 Rent Collection from Tenants
- Clause 3 Rent Arrears Control
- Clause 4 Collection of Arrears due at the Starting Date
- Clause 5 Former Tenants' Arrears
- Clause 6 Housing Benefit Payments
- Clause 7 Setting Rent Payable by Tenants
- Clause 8 Notification of Rent Changes
- Clause 9 Payment to the Council of Rent due
- Clause 10 Voids Allowances
- Clause 11 Bad Debts/ Write offs
- Clause 12 Voids and Rents waivers
  
- Schedule 1 Rent Collection and Arrears Control Procedure
- Schedule 2 Tenant Service Charge Procedure

### **CHAPTER 4**

#### Leaseholder and Freeholder Service Charges

- Clause 1 Confidentiality and Procedures
- Clause 2 Information
- Clause 3 Service Charges: Calculation, sending of Demands and Collection
- Clause 4 Ground Rents

- Clause 5 Service Charge and Ground Rent Arrears
- Clause 6 Consultation Provisions under the Landlord and Tenant Act 1985 relating to Service Charges where both the Council and the TMO provide services
- Clause 7 Supplementary provisions in relation to clause 6
- Clause 8 Other Provisions of the Landlord and Tenant Act 1985 relating to Service Charges
- Clause 9 Payment of Service Charges and Ground Rent to the Council
- Clause 10 Financial Incentives and Penalties in relation to Collection of Service Charge Arrears

The Schedule Service Charges Procedure

## **CHAPTER 5**

### Financial Management

- Clause 1 Calculation of Allowances
- Clause 2 Payment of Allowances
- Clause 3 Payment of Management and Maintenance Costs and Administrative Expenses incurred by the TMO
- Clause 4 The TMO's Banking Arrangements
- Clause 5 Financial Control and Accounting Standards
- Clause 6 Financial Year
- Clause 7 Restriction on Investments
- Clause 8 Reserve Funds
- Clause 9 Major Works Account
- Clause 10 Financial Report and Surplus Fund
- Clause 11 Loans to the TMO
- Clause 12 Interest on late Payments
- Clause 13 Set Off of Payments
- Clause 14 Registration for VAT

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

## **CHAPTER 6**

### Tenancy Management

- Clause 1 Information to Housing Applicants
- Clause 2 Consultation between the TMO and the Council
- Clause 3 Selection of Tenants of vacant Property dwellings
- Clause 4 Transfers
- Clause 5 Introductory Tenancies
- Clause 6 Variations to the Tenancy Agreement
- Clause 7 Breach of a tenancy agreement, term of a lease, or covenant in a freehold transfer
- Clause 8 Anti-social Behaviour and Harassment

- Clause 9 Residents' Disputes
- Clause 10 Unlawful Occupation
- Clause 11 Void Dwellings
- Clause 12 Right to Exchange
- Clause 13 Right to Assign restricted category of Persons
- Clause 14 Applications to Sublet
- Clause 15 Right of Succession
- Clause 16 Giving Consents
- Clause 17 Right to Buy and Sales
- Clause 18 Right to Buy: Enquiries before Exchange of Contracts
- Clause 19 Use of the Property

- 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 35 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 Residents' Disputes Policy and Procedure
- Schedule 8 Mutual Exchanges Policy And Procedure
- Schedule 9 Sub-Letting Policy
- 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

- Clause 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
- Clause 2 Employment of Staff (other than those transferring under clause 1)
- Clause 3 Secondment of Council Staff to the TMO
- Clause 4 Employment of Contractors
- Clause 5 Access to Council Officers
- Clause 6 Liaison Officers
- Clause 7 TMO Liaison Committee
- Clause 8 The Council's Nominee
- Clause 9 Help to the TMO
- Clause 10 Service of Notices
- Clause 11 Misdirected Notices
- Clause 12 Notice of Legal Proceedings
- Clause 13 Information to be provided

Clause 14	Changes in Management or Ownership
Clause 15	Statutory Consultation
Clause 16	Non-statutory Consultation
Clause 17	Complaints about the TMO's or Council's Performance as Manager of the Property dwellings
Clause 18	Disputes and Arbitration
Clause 19	Information to the Secretary of State
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

Clause 1	The TMO's Performance Standards
Clause 2	The Council's Performance Standards
Clause 3	Regular Monitoring and Development Meetings
Clause 4	Annual Review
Clause 5	Equal Opportunities Monitoring
Clause 6	Best Value Reviews
Clause 7	Five Year and Special Reviews

The Schedule Key Performance Indicators

The Annex Comparators

## **CHAPTER 9**

### Definition of Terms and Location of First Use of a Term

#### **NOTE ON SCHEDULES AND ANNEXES**

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 the Guidance on the Schedules. 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

- 1.1 This Agreement is made between the Council and the Tenant Management Organisation (the **TMO**).

### 2 The council and the property

- 2.1 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 1 (**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**

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

The **TMO** will exercise the functions it has agreed to exercise under this Agreement from the **Starting Date** of 19<sup>th</sup> May 2015 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 management functions for the **Property** in accordance with the 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. 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 provision 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:

- a) damage to the structure of the **Property** (buildings insurance);
- b) claims by third parties arising out of risks in or on the **Property** (public liability insurance);
- c) claims by employees of the Council working in or on the **Property** (employer's liability insurance);
- d) the loss through fire or theft of property belonging to the Council in or on the

**Property** (contents insurance);

e) such other risks as the Council may from time to time determine.

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 by third parties (public liability insurance);

b) claims by the **TMO's** Staff (employer's liability insurance);

c) the dishonesty of the **TMO's** Staff or the **TMO's** officers (fidelity guarantee insurance);

d) the loss through fire or theft of property belonging to the Council in or on the **Property** which the **TMO** has custody of because of its duties and responsibilities in this Agreement;

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 dependants, 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; and
  - 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 Council's right of access to dwellings**

- 15.1 The Council will have the 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 or annoyance as possible to residents in a dwelling and will make good to the **TMO's** 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 under 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 been 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** and contained in the Guidance on the Schedules.
- 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*; and
- 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 in accordance with their constitution 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:
    - i) the majority of those responding; and
    - ii) 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 modifies 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 purposes 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 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 fulfil 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; and
  - 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 of management functions exercised by the **TMO**.
- 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 **TMO**, 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 provisions 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 1 which is owned by the Council.

## Chapter 2

### Repairs, Maintenance and Services Provision

#### 1 Functions of the TMO in respect of Responsive and Planned Maintenance Repairs *Link to clause 2, Option B.*

*(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 repair that it is practicable for the TMO to carry out, subject to the provisions of clauses 8 and 9 and the provisions 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 1); 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 1 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 1.
- 3.6 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 finalising 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 of 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 D)**

(Option D: The Council and the TMO agree that more than one of Options A, B and C may be operated concurrently.)

6.1 The Council and the TMO agree that more than one of the Options A, B and C of this clause (set out below) may be operated concurrently in respect of different Major Works, and the provisions of the relevant Option clause shall apply in respect of the relevant 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**.

**(Option C: The TMO agrees with the Council to enter into Major Works contracts and supervise them within the budget for Major Works contained within the Allowances.)**

- 6.1 The **TMO** agrees to enter into contracts for agreed **Major Works** and supervise such works if the Council has included a sufficient amount within the **Allowances** for the **TMO** to carry out such works.
- 6.2 Before carrying out the **Major Works**, the **TMO** may notify the Council that it considers that the **Allowances** are insufficient to carry out some or all of the **Major Works** for which they have been allocated. The Council will consider any such requests. If the Council proposes to increase the amount of the **Allowances** and the **TMO** considers that increase to be sufficient, the **Allowances** will be adjusted and the work carried out accordingly. If the Council does not propose to increase the amount of the **Allowances**, or if the **TMO** does not consider a proposed increase to be sufficient, the **TMO** will not be under an obligation to carry out those **Major Works**. The **Allowances** will be reduced accordingly and the Council will carry out those works.
- 6.3 At the time the **TMO** intends to carry out the **Major Works** listed in Schedule 4 (**The TMO's Major Works Functions**), the **TMO** will submit to the Council for approval details of:
  - a) the **Major Works** the **TMO** intends to undertake;
  - b) the intended programme for the **Major Works**;
  - c) the access arrangements required for the **Major Works**; and
  - d) the contractors from whom the **TMO** intends to invite tenders for the **Major Works**.
- 6.4 Within 28 days of receiving tenders for the **Major Works**, the **TMO** will submit to the Council for approval details of:
  - a) the tenders received for the **Major Works**;
  - b) the contractor or contractors whose tender or tenders the **TMO** intends to accept for the **Major Works**; and
  - c) the date upon which the contractor intends to commence the **Major Works**.

- 6.5 The **TMO** will not invite tenders or enter into a contract for **Major Works** without approval from the Council. The Council will not withhold or delay approval without good reason. In fulfilling its obligations under this clause the **TMO** will comply with the performance standards for entering into and supervising contracts for **Major Works** set out in Schedule 3.
- 6.6 The Council will only carry out any **Major Works** listed in Schedule 4 in accordance with the provisions of clause 6.2.
- 6.7 In a case falling within clause 4 (initiation of **Major Works** by the Council), the Council and the **TMO** may agree that the **TMO** is to undertake the works and receive the appropriate **Allowances**.

## **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 B)**

*(Option B: The Council makes claims for repairs covered by the Council's buildings insurance policy, but the **TMO** carries out such repairs if they are included in the repairs listed in Schedule 1.)*

- 9.1 The Council will 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 as to the types of repairs that are **Insurance Repairs**, including the action needed to avoid invalidating insurance claims, particularly if a dwelling is void and left vacant for more than one month. The arrangements for undertaking **Insurance Repairs** are set out in Schedule 5.
- 9.3 If the **TMO** considers that a repair that falls within the list of repairs in Annex A to Schedule 1 is an **Insurance Repair**, the **TMO** will immediately notify the Council in writing of that fact and follow the procedure for carrying out an **Insurance Repair** set out in Schedule 5.
- 9.4 If the Council receives a notice from the **TMO** under clause 9.3 or is otherwise aware that an **Insurance Repair** is needed, the Council 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 B to Schedule 1, the Council will follow the procedure for carrying out **Insurance Repairs** set out in Schedule 5.
- 9.5 The **TMO** will, as soon as is reasonably practicable after receiving a request from the Council, provide the Council with any information which the Council may reasonably require in order to make or pursue a claim to its insurers for the cost of an **Insurance Repair**.

## 10 Provision of Estate Services (Option B)

*(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**

*(Clause for approving or refusing improvement requests.)*

- 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**

*(Clause for administering the right of secure and introductory tenants to have repairs carried out.)*

- 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 Regulations** for compensation for failure to carry out repairs it has agreed to carry out in accordance with clause 2.

## Chapter 3

### ***Rent (including Tenant Service Charges)***

#### **1 Confidentiality and procedures**

- 1.1 The **Tenant Management Organisation** will treat as strictly confidential all information in its possession about **Rent** accounts. Only the employees or officers of the **Tenant Management Organisation** 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 **Tenant Management Organisation** which has overall oversight of the management of **Rent** accounts or to a general meeting of the **Tenant Management Organisation** 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 1.

#### **2 Rent collection from tenants**

*(Option B: The **Tenant Management Organisation** administers the collection of rent into the Council's bank account. The **Tenant Management Organisation** also agrees to manage rent arrears.)*

- 2.1 The **Tenant Management Organisation** is authorised to administer the collection of **Rents** due from tenants and agrees to do so. For the purposes of this clause **Rent** includes any charges made for the provision of services under clause 10 of Chapter 2.
- 2.2 All **Rent** received will be paid by into the Council's bank account and will be credited to **Rent** account records within the period specified in Schedule 1 (**Rent Collection and Arrears Control Procedure**).
- 2.3. The **Tenant Management Organisation** will for each rental payment period (as specified in the **Tenancy Agreement**) and not less frequently than once each month –
- a) calculate the arrears or advance balance on each **Rent** account;

### 3 Rent arrears control

*(Option E: The **Tenant Management Organisation** manages all aspects of **Rent** arrears in accordance with the provisions of Schedule 1. The **Tenant Management Organisation** agrees to notify Council at specified stages.)*

- 3.1 The **Tenant Management Organisation** agrees to take prompt action to recover any Rent arrears and to seek to prevent arrears accruing by managing cases of arrears in accordance with the provisions of Schedule 1.
- 3.2 The Council authorises the **Tenant Management Organisation** to take legal proceedings under this clause where **Rent** arrears have arisen if the **Tenant Management Organisation** is unable to recover arrears in accordance with the provisions of Schedule 1. In taking such action the **Tenant Management Organisation** will act in accordance with the provisions of that Schedule. The **Tenant Management Organisation** will notify the Council in writing within seven days if the **Tenant Management Organisation**:
  - a) serves a Notice Seeking Possession or a Notice to Quit, or notice of any other intended court proceedings;
  - b) begins court proceedings; or
  - c) obtains a court order, and the terms of such an order.
- 3.3 The **Tenant Management Organisation** will not enforce a court order without the written consent of the Council. The Council will reply within seven days of a request to enforce a court order being received. If the Council refuses consent or gives consent subject to conditions, the Council will have a further seven days to give the **Tenant Management Organisation** written reasons for the refusal or for the conditions imposed.
- 3.4 If the **Tenant Management Organisation** enforces a court order for possession of any dwelling the **Tenant Management Organisation** will give the Council at least 48 hours' written notice of the date and time at which possession will be obtained.

### 4 Collection of arrears due at the at the starting date

*(Option C: The **Tenant Management Organisation** manages rent arrears and collects rent arrears, including arrears due at the **Starting Date** of this Agreement.)*

- 4.1 Within 14 days of the **Starting Date** the Council will provide the **Tenant Management Organisation** with a statement of the balance of the **Rent** accounts of all tenants for whom the **Tenant Management Organisation** will be collecting rent and managing rent arrears in accordance with clauses 2 and 3. Each balance will be as at the last rent due date before the **Starting Date**. The statement will show the **Starting Date Arrears**

(current rent arrears) of all tenants.

- 4.2 The **Tenant Management Organisation** will take prompt action to recover **Starting Date Arrears** and arrears of **Rents** in accordance with the provisions of Schedule 1.
- 4.3 All monies collected by the **Tenant Management Organisation** from a tenant in arrears at the **Starting Date** will be first used to meet current **Rent** due after the **Starting Date** and then used to reduce the **Starting Date Arrears**, until the tenant ceases to be in such arrears.
- 4.4 In addition to the **Rents** collected by the **Tenant Management Organisation** and payable to the Council (see clause 9), the **Tenant Management Organisation** will pay to the Council an agreed proportion of the **Starting Date Arrears** which the **Tenant Management Organisation** can reasonably be expected to collect. The amount will be paid to the Council in quarterly instalments.

## 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

*Housing benefit is being replaced by Universal Credit for new claimants from October 2013 and for all claimants by 2017. Universal Credit will be paid directly to the claimant in most circumstances. In this case clause 6A will necessarily apply.*

*(Option A: The Council collects **Rents** and manages rent arrears or the **Tenant Management Organisation** collects rent but Universal Credit is paid directly to the claimant.)*

- 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 having regard to Government's guidance on rents for social housing) 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 **Tenant Management Organisation** out of the **Tenant Management Organisation'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**

**dwelling**s by the **Tenant Management Organisation**.

- 7.3 Where the **Tenant Management Organisation**, after consultation with tenants, decides that additional services should be provided, or that additional services being provided should no longer be provided, the **Tenant Management Organisation** 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 **Tenant Management Organisation** decides to add the provision of additional **Estate Services** to its management functions (clause 10 of Chapter 2), the cost for providing the services may 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 **Tenant Management Organisation** 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 **Tenant Management Organisation**, if appropriate, for additional services under clause 7.3.
- 7.6 The Council will give the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 charges**

*(Option A: The Council notifies tenants directly and notifies the **Tenant Management Organisation** 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 **Tenant Management Organisation** of those changes in **Rent**.

## **9 Payment to the Council of rent due**

*(Option A: The Council continues to collect the rent or the **Tenant Management Organisation** and the Council have agreed a self financing arrangement and the **Tenant Management Organisation** will retain the rents collected.)*

9.1 Clause not included.

## **10 Voids allowances**

*(Option A: The Tenant Management Organisation does not collect rent or manage rent arrears.)*

10.1 Clause not included.

## **11. Bad debts/write offs**

*(Option A: The Tenant Management Organisation does not manage rent arrears.)*

11.1 Clause not included.

## **12 Voids and rents waivers**

*(Option A: The Tenant Management Organisation does not manage voids, select tenants and does not collect rent or manage rent arrears.)*

12.1 Clause not included.

## 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 account) 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)

*(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)**

*(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 B)**

*(Option B: The **TMO** manages all **Service Charge** and **Ground Rent** arrears.) [Link to clause 9, Option B and clause 10.]*

5.1 The **TMO** will manage all **Service Charge** and **Ground Rent** arrears, and is authorised to take recovery action in respect of all **Service Charges** and **Ground Rents** in accordance with the provisions of the Schedule. However written consent of the Council will be required prior to the issue of forfeiture proceedings.

5.2 The **TMO** agrees to inform the Council of any action it intends to take to remedy any **Breach** of lease or covenant in respect of **Service Charge** arrears.

#### **6 Consultation provisions under the Landlord and Tenant Act 1985 relating to Service Charges where both the council and the TMO provide services (Option C)**

*(Option C: Where both the Council and the **TMO** provide services, the **consultation requirements** will be complied with by the Council and the **TMO** in relation to the respective services provided by each party.)*

6.1 Both the Council and the **TMO** provide services, and the parties agree that the **consultation requirements** will be complied with by each party in relation to the respective services provided by that party.

#### **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)**

*(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 accompany 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 comply with the provisions of clause 8.1.

## **9 Payment of service charges and ground rent to the council (Option A)**

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

- 9.1 Clause not included.

# Chapter 5

## 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.
- 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)

*(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 installments in advance in accordance with the agreement between the parties as to **Financial Procedures** set out in Schedule 2.
- 2.2 Where this Agreement ends in the course of a **Financial Year**, the **Allowances** payable 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)**

*(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 authorised 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)**

*(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**

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)**

*(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)

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

9.1 Clause not included.

## 10 Financial report and surplus fund (Option B)

*(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 **TMO**, 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)**

*(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 this 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)**

*(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.

# 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 1 (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 in 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 (Option C)

*(Option C: The **TMO** selects tenants of vacant **Property dwellings** from a list of eligible potential tenants supplied by the Council.)*

- 3.1 The **TMO** will allocate vacant **Property dwellings** in accordance with the Council's published allocation scheme and in accordance with the following provisions of this clause and the provisions of Schedule 2.
- 3.2 Where the Council is satisfied that more than one person meets the criteria for selection as a tenant of a vacant **Property** dwelling, the Council will provide the **TMO** with a list of those persons and such information about them as it regards as relevant and request the **TMO** to select one of them to be the tenant of the vacant **Property** dwelling.
- 3.3 The **TMO** will select a tenant in accordance with the procedures and timetable set out in Schedule 2.
- 3.4 Where a person has been selected as a tenant of a vacant **Property** dwelling, the **TMO** is authorised to carry out all the necessary administrative procedures prior to the grant of the tenancy in accordance with the provisions of Schedule 2.
- 3.5 The tenancy granted by the Council will be in the form of a **Tenancy Agreement** set out in Annex A to this Chapter.
- 3.6 The Council may, where it is satisfied that a person has exceptionally urgent housing needs, allocate a specific **Property** dwelling to that person, notwithstanding that it has already provided a list of persons to the **TMO** under clause 3.2, provided that the **TMO** has not already selected another person as a tenant of that dwelling under clause 3.3 and notified the person of the selection.
- 3.7 Where the Council has made an allocation in accordance with the provisions of clause 3.6, it will, no later than two working days after its decision to make the allocation, give reasons in writing for its decision to the **TMO**.
- 3.8 Where a case falls within clause 3.6:
  - (a) clause 3.4 will not apply and the Council will carry out all the necessary administrative procedures prior to the grant of the tenancy; and
  - (b) the provisions of clause 18 of Chapter 7 will not apply.
- 3.9 The Council will make arrangements for the selection process to be monitored. The monitoring may, if the Council so decides, involve the presence of a representative of the Council as an observer on any interview panel. The monitoring will be carried out in accordance with the provisions of Schedule 2.
- 3.10 If the Council is satisfied that the **TMO** is not selecting tenants of vacant **Property dwellings** in a fair and proper manner, it will request the **TMO** in writing to make appropriate changes to its selection procedures within such reasonable period as the Council specifies, and in accordance with the provisions of Schedule 2.
- 3.11 If, after the period specified by the Council under clause 3.10 has expired, the Council is satisfied that the **TMO** is still not selecting tenants in a fair and proper

manner, it may, in accordance with the provisions of Schedule 2, terminate this Option on giving seven days' notice in writing to the **TMO**.

- 3.12 Where this Option is terminated under clause 3.11, either Option A or Option B of Clause 3 will come into effect. The Option may be chosen by the **TMO** but, if the **TMO** fails to make that choice prior to the termination of this Option, the choice will be made by the Council.

#### **4 Transfers (Option B)**

*(Option B: The TMO 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 **TMO** 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 C)**

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

- 5.1 The **TMO** will monitor Introductory Tenancies in accordance with the procedure set out in Schedule 3.

#### **6 Variations to the tenancy agreement (Option A)**

*(Option A: Variations to the terms of a tenancy can only be initiated by the Council.)*

- 6.1 Only the Council can propose changes to the terms of any **Tenancy Agreement**.
- 6.2 If the Council proposes to change the terms of the **Tenancy Agreement** (other than changes to **Rent**, see Chapter 3, clause 7) the Council will give the **TMO** a written **Tenancy Variation Notice** detailing the changes proposed.
- 6.3 To enable the **TMO** to consult its members on changes proposed by the Council, the **Tenancy Variation Notice** will be served on the **TMO** at least 56 days in advance of the date on which the Council intends to serve a preliminary notice of variation on secure tenants required by section 103(2) of the Housing Act 1985.
- 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 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 B: The TMO is authorised to end tenancies.)*

7.1 In carrying out its **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** arrears -

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** is authorised in the name of the Council to serve whichever notice of the notices mentioned in Schedule 5 is appropriate in the circumstances of the case.

7.3 The **TMO** will not take action under clause 7.2 unless it has first taken reasonable steps to remedy the alleged **Breach** and, if the steps taken by the **TMO** have not been effective, it is satisfied that it is not possible for the **Breach** to be remedied without taking such action.

7.4 The **TMO** will within seven days of taking any of the actions under clause 7.2 inform the Council in writing, in accordance with the provisions of Schedule 5.

7.5 The **TMO** is authorised to take Court proceedings, in the name of the Council.

7.6 The **TMO** will, before applying to the Court for an order of possession, or for enforcement of any judgement of the Court, obtain the written consent of the Council.

## **8 Anti-social behaviour and harassment (Option B)**

*(Option B: The TMO is authorised to deal with anti-social behaviour and harassment.)  
[Must be used if clause 9 option B is used.]*

8.1 The **TMO** will investigate and take action to deal with 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.

## **9 Residents' disputes (Option B)**

*(Option B: The TMO is authorised to deal with disputes.)*

- 9.1 If the **TMO** receives from any lawful resident of a **Property** dwelling a written Complaint requesting the **TMO** to take action against another person, the **TMO** will investigate the Complaint within 21 days (or such other time limit as may be reasonable in the circumstances). The **TMO** will decide whether the matter complained of is a **Breach** of the **Tenancy Agreement** or, as the case may be, term of the lease or freehold covenant.
- 9.2 If the **TMO** considers that the matter complained of constitutes a **Breach**, the **TMO** will take action to ensure that the **Breach** is remedied (see clause 7).
- 9.3 If the **TMO** considers that the matter complained of does not constitute a **Breach**, the **TMO** will try to resolve the dispute by following the Residents' Disputes Policy and Procedure set out in Schedule 7.

## **10 Unlawful occupation (Option B)**

*(Option B: The TMO investigates unlawful occupation and informs the Council.)*

### 10.1 If the **TMO**:

- (a) has reason to believe that a **Property** dwelling is sublet without consent or occupied unlawfully; or
- (b) receives written evidence from the Council that the Council considers that a **Property** dwelling is occupied unlawfully, the **TMO** will:
  - (i) carry out an investigation to determine whether or not the dwelling is unlawfully occupied; and
  - (ii) within 28 days inform the Council of the results of its investigation and recommend any action the Council needs to take.

- 10.2 If, having carried out the investigation, the **TMO** 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)**

*(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 may be, 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 (Option B)**

*(Option B: The TMO administers the Right to Exchange.)*

12.1 The **TMO** is authorised to receive **Application to Exchange** notices from secure tenants who have the Right to Exchange under section 92 of the Housing Act 1985, and to administer exchanges, in accordance with the provisions of Schedule 8.

## **13 Right to assign to restricted category of persons (Option B)**

*(Option B: The TMO administers the assignment.)*

13.1 The **TMO** is authorised to receive 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, and to administer such assignments, in accordance with the provisions of Schedule 9 (Voluntary Assignments: Policy and Procedures).

## **14 Applications to sublet (Option B)**

*(Option B: The TMO administers applications from tenants to sublet.)*

14.1 The **TMO** 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 **TMO** will, in deciding whether to give consent to subletting, act in accordance with the provisions of Schedule 10. The **TMO** will, on request, provide any tenant of a **Property** dwelling with a copy of the **Current Subletting Policy** [on payment of a reasonable charge]/[free of charge].

14.3 Each year the **TMO** will provide the Council with a list of the consents it has given to tenants to sublet. Where the Council requires further information for the purposes of determining whether the consents have been given in accordance with the **Subletting Policy**, the **TMO** shall provide that information.

## **15 Right of succession (Option B)**

*(Option B: The TMO administers the Right of Succession.)*

15.1 The **TMO** will administer any **Claim to the Right of Succession** of a person claiming that he or she is qualified to succeed to the tenancy of a **Property** dwelling under sections 87 to 90 of the Housing Act 1985. The **TMO** will in administering such claims act in accordance with the Council's policy which is set out at Annex B and is available free of charge from the **TMO**.

15.2 The **TMO** will within 14 days of receiving a **Claim to the Right of Succession** inform the Council in writing that the claim has been made.

- 15.3 The **TMO** will within 28 days of receiving a **Claim to the Right of Succession** send the Council a **Right of Succession Notice** stating whether or not the **TMO** intends to accept the claim. The **TMO** will not accept any claim earlier than the seventh day after the date on which it sent the **Right of Succession Notice** to the Council.
- 15.4 If the Council considers that the **TMO** has not correctly applied the Right of Succession Policy the Council may, within seven days of the date on which it received the **Right of Succession Notice**:
- (a) in a case where the **TMO** has accepted the Right of Succession, request the **TMO** in writing to refuse the **Claim to the Right of Succession** giving reasons why the Council considers that the claim should be refused; or
  - (b) in a case where the **TMO** has refused the Right of Succession, request the **TMO** in writing to accept the **Claim to the Right of Succession** giving reasons why the Council considers that the claim should be accepted.

The Council will make the final decision after taking into account comments made by the **TMO**.

## 16 Giving consents

- 16.1 The Council 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 11 (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 11.
- 16.3 Where consent is required in respect of a matter that is not listed in Schedule 11, the **TMO** and the Council will agree as to which of them should consider the application, and Schedule 11 will be amended accordingly in accordance with the provisions of clause 18.1 c) 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 (Option B)

*(Option B: The **TMO** collects Rent and manages Rent Arrears.) Link to Chapter 3, clause 2, Options B and C and Chapter 3, clause 3, Options C, D and E.*

- 17.1.1 The Council will consult the **TMO** about the general terms and conditions of sale of **Property dwellings**. The Council will:
- (a) provide the **TMO** with a copy of the terms and conditions of sale; and
  - (b) give the **TMO** not less than one month's advance written notice of any proposed change to the terms and conditions of sale.

17.1.2 The **TMO** may request the Council to alter any of the terms and conditions of sale which directly affects 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 The Council will within 14 days notify the **TMO** in writing of any of the following:

- (a) the receipt of a notice from a tenant under section 122 of the Housing Act 1985 claiming to exercise the **Right to Buy**;
- (b) the service of a notice by the Council under section 124 of the Housing Act 1985 admitting or denying the **Right to Buy**;
- (c) the service of a notice by the Council under section 125 of the Housing Act 1985 notifying the tenant of the purchase price to be paid in exercising the **Right to Buy** and of other matters;
- (d) the service of a notice by the Council under section 140 or 141 of the Housing Act 1985 requiring the tenant to complete;
- (e) the receipt of any notice from a tenant served under section 144 of the Housing Act 1985 claiming to exercise the right to acquire on **Rent** to mortgage terms;
- (f) the receipt of a notice from a tenant under section 153A of the Housing Act 1985 of an initial notice of delay, or the service of a counter-notice by the Council under that section; and
- (g) the receipt of a notice from a tenant under section 122 of the Housing Act 1985 withdrawing a claim to exercise the **Right to Buy**.

17.3 The Council will keep the **TMO** informed of the progress of the claim at each major stage.

(Option 2: The **TMO** is authorised to take action to terminate tenancies.) [Linked to Chapter 3, clause 3 Options D - E.]

17.4 The **TMO** will:

- 17.4.1 within 14 days of receiving a written request from the Council supply the Council with any information it may reasonably require in order to comply with its obligations under Part 5 of the Housing Act 1985;
- 17.4.2 inform the Council within 7 days of commencing possession proceedings that it has done so; and
- 17.4.3 immediately give the Council written notice if it obtains or has obtained a Court Order for the Possession of a dwelling in respect of which it has received notification under clause 17.2 that a tenant has served a notice claiming to exercise the **Right to Buy**.

- 17.5 The Council will give the **TMO** at least seven days' notice in writing of the expected completion date of the sale of any dwelling in the **Property** under Part 5 of the Housing Act 1985. On receiving this notice the **TMO** will immediately notify the Council in writing of any arrears of **Rent**.
- 17.6 The Council will not complete the sale of any **Property** dwelling if the tenant has any amount outstanding of **Rent** or any other payment due from him as a tenant for a period of four weeks after it has been lawfully demanded. Before completing the sale of any **Property** dwelling the Council will make all reasonable attempts to recover from the tenant any arrears notified to the Council under clause 17.5.
- 17.7 Where the Council fails to follow the procedure or fails to consult the **TMO** as set out in this clause the Council will be liable for any **Rent** arrears that arise.

## **18 Right to Buy: enquiries before exchange of contracts (Option B)**

*(Option B: The TMO deals with pre-contract enquiries.)*

- 18.1 The **TMO** will deal with enquiries before exchange of contracts in accordance with the provisions of Schedule 12 (**Right to Buy: Enquiries before exchange of contracts**), and be entitled to charge for this service in accordance with paragraph 3 of that Schedule.

## **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.

## Chapter 7

### Staffing and Management of the Relationship between the TMO and the Council

#### 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

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)

*(Option A: Secondment option is not chosen.)*

3.1 Clause not included.

#### 4 Employment of contractors (Option B)

*(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 Inspection 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 subcommittees. The **TMO** will send the **Liaison**

**Officer** copies of all agendas, papers and minutes of general meetings, committee meetings and subcommittee 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 councillors 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 T he council's nominee (Option A)**

*(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 1, 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);

(d) this Chapter, clause 18 (notices relating to dispute or arbitration); and

(e) Chapter 6, clause 17 (notices relating to **Right to Buy** applications).

will either be served by hand and receipt acknowledged by the Council's nominated **Liaison Officer** (or in the **Liaison Officer's** absence by a more senior officer) or be sent by recorded delivery post to the **Council's Offices** or, as the case may be, to the **TMO's Registered Office**.

10.2 All other written notices may be served by post, and service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice and to have been effected at the time at which the letter would be 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 10.1, 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 the 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**; and
  - (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; and
  - (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)**

*(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.

## **17 Complaints about the TMO's or council's performance as manager of the Property dwellings**

- 17.1 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.
- 17.2 The **TMO** will provide the Council with the assistance and information it may reasonably require in dealing with a Local Government Ombudsman's investigations 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**; and
  - (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.

(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.
- 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(4)(a) or 18(6)(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.

## 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; and
- (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 fulfill those obligations.

### **4 Annual review**

4.1 Within three months of the end of the **Financial Year** the **TMO** 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 **TMO** 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 1, clause 10).

## 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 Procedures;
- (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:

- (a) identify the deficiencies (if any) in the functioning or performance of the **TMO**;
- (b) make positive recommendations as to the action and practical steps which the **TMO** needs to take; and
- (c) 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; and
- (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 7.5 b) 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.
- 7.7 The **Review Report** will form the basis of the information presented to the tenants and leaseholders by the **TMO** 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.

## **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 aggregate of 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 in dealing with cases of anti-social behaviour and harassment.

### **Application to Exchange**

*(Chapter 6, 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 in the **Best Value** framework introduced under the Local Government Act 1999.

### **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)*

### **Not Applicable**

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

The Co-operative

*(Title Page)*

The Wellington Mills Housing Co-operative (**the TMO**). A **TMO** is required to meet the conditions set out in regulation 1(4) of the Right to Manage Regulations.

### **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.

### **Council's Representatives**

*(Chapter 7, clause 7)*

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

### **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 Council's 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.

### **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.

### **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 respective **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)*

Bank of England

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 time scales 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)*

A 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 19<sup>th</sup> May 2015

### **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 that relevant **Management Functions** become exercisable by the Council's direction for such period as is specified in the notice.

### **Supervision Termination 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 B 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 **TMO 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.

### **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**.

### **Void Losses**

*(Chapter 3, clause 10, Option B)*

Loss of income due from dwellings in the **Property** that remain vacant.

### **Voids Percentage**

*(Chapter 3, clause 10)* **As per the percentage set out in Chapter 3, Schedule 1, Clause 1.12**

The percentage of the total amount of money collectable by the **TMO** on behalf of the Council allowed for **Rent** losses from dwellings that remain empty while reletting occurs (\*and bad debts from **Rent** and **Service Charge** arrears which the **TMO** is unable to recover).

\* Note: omit section of definition in brackets if Chapter 3, clause 12, option A is used.

### **Voids Percentage Amount**

*(Chapter 3, clause 9)*

The amount allowed for **Rent** losses from dwellings that remain empty while reletting occurs, calculated from the Voids Percentage.

### **Warning Notice**

*(Chapter 1, clause 19)*

If the **TMO** fails to rectify a problem after a **Breach** Notice the Council can issue a further written notice to the **TMO** (a Warning Notice) warning the **TMO** that unless a **Breach** of the Agreement is remedied within 21 days the functions specified in the notice will be removed from the functions being exercised by the **TMO**.

### **Working day**

Any day other than a Saturday, Sunday, or bank holiday.