

# **TENANT MANAGEMENT ORGANISATION LIMITED**

**Modular Management Agreement for  
Tenant Management Organisations**

**VOLUME 1: The Agreement**

**This agreement**

is made the 12th day of June 2006

BETWEEN

- (1) THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA (called "the Council" in this Agreement), and
- (2) THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA TENANT MANAGEMENT ORGANISATION LIMITED (called "the BWTMO" 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 and in respect of those functions defined in this Agreement as Major Works or ALMO functions from 3 October 2002 with the approval of the Secretary of State.

The Council agrees for the BWTMO 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 BWTMO agree to act in accordance with the terms of this Agreement.

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

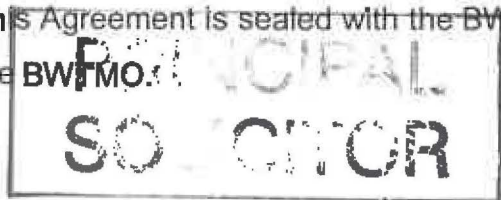
  
**PRINCIPAL  
SOLICITOR**

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Signed ..... on behalf of the Council

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



Signed  ..... BWTMO Board Member

Signed  ..... ~~BWTMO Board Member~~  
BWTMO Company Secretary

This Modular Management Agreement ("MMA") for Tenant Management Organisations is approved by the Secretary of State under regulation 4(10) of the Housing (Right to Manage) Regulations 1994, and replaces that approved in 1994. Clause 18(1)(f) of Chapter 1 of the 1994 MMA permits the BWTMO and the Council to agree to vary the agreement which they entered into on 28 February 1996, to conform to this MMA.

The parties have agreed that from the Start Date this MMA will supersede the 1994 MMA and a Deed of Variation dated 7 November 2002 varying the 1994 MMA in respect of those functions relating to Major Works or ALMO functions approved by the Secretary of State. This MMA takes effect on the Start Date but the parties' existing rights and liabilities under the 1994 MMA (as amended) remain unaffected.

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An Individual Agreement entered into by a BWTMO 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 and Annexes referred to in the MMA are contained in Volume 2 of this Agreement.

## **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 BWTMO).

#### **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.

- 2.2 The Council's management obligations in respect of the Property are delegated under this Agreement. The Council has also appointed the BWTMO to act as its agent in respect of those management functions that the Council is responsible for under its agreement with the EMB and these responsibilities are recorded in Schedule 1(a).

#### **3. THE BWTMO**

- 3.1 The BWTMO is a company limited by guarantee registered under the provisions of the Companies Act 1985. A summary of The BWTMO's constitution is set out in Annex A.

- 3.2 While this Agreement is in force the BWTMO 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 BWTMO 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 BWTMO 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 and in respect of Major Works or ALMO functions with the approval of the Secretary of State from 3 October 2002.
- 4.2 Nothing in this Agreement gives the BWTMO 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**

The BWTMO will exercise the functions it has agreed to exercise under this Agreement from the Starting Date of 1 April 2006 until the date on which this Agreement is ended in accordance with clause 20.

**6. THE BWTMO'S EXERCISE OF MANAGEMENT FUNCTIONS**

- 6.1 The BWTMO will carry out management functions for the Property in accordance with the terms of this Agreement.

- 6.2 In carrying out these functions the BWTMO will comply with the Council's legal obligations.
- 6.3 The BWTMO may, with the consent of the Council, appoint another person to carry out management functions.
- 6.4 The BWTMO agrees to exercise its functions in accordance with the performance standards set out in the Schedules and Appendices to this Agreement. The BWTMO 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 BWTMO of any action by the BWTMO 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 BWTMO on being so informed agrees not to carry out any such action.
- 6.6 The BWTMO will comply with obligations imposed by law on the Council in so far as such obligations apply to the BWTMO, and obligations imposed by law on the BWTMO.

## **7. INSURANCE**

- 7.1 The Council will insure the following risks should it consider appropriate to effect insurance cover:
- 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) such other risks as the Council may, having consulted the BWTMO, determine.

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

**7.3** The BWTMO 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 BWTMO's Staff (employer's liability insurance);
- c) the dishonesty of the BWTMO's or the BWTMO'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 BWTMO has custody of because of its duties and responsibilities under this Agreement;
- e) such other risks in respect of the BWTMO'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 BWTMO 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 BWTMO under this Agreement. Accordingly, the BWTMO will indemnify the Council against any loss or damage which the Council suffers as a result of an error or failure by the BWTMO in fulfilling its obligations under this Agreement or as a result of such an



error or failure by another person appointed by the BWTMO 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 BWTMO against any loss or damage which the BWTMO 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 BWTMO will treat as strictly confidential all information in its possession in relation to tenants, leaseholders and freeholders of a dwelling. The BWTMO will use such information only for the purpose of fulfilling its obligations under this Agreement. The BWTMO 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 BWTMO will register if necessary as data users and comply with the requirements of the Data Protection Act 1998.
- 9.4 The BWTMO 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 BWTMO will act in accordance with its Equal Opportunities Policy and Procedures set out in Schedule 2. The BWTMO will operate equal opportunities policies and procedures in exercising all of its functions under this Agreement. By implementing equal opportunities policies and procedures the BWTMO 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 BWTMO 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 BWTMO will supply the following persons with a statement of the BWTMO's Equal Opportunities Policy and Procedures:
- a)** every member of the BWTMO;
  - 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 BWTMO 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 BWTMO has the necessary skills and knowledge to fulfil its obligations under this Agreement the BWTMO will ensure that its members, committee members and staff have access to training opportunities, including training in:

- a) BWTMO rules, committee skills and democratic decision making;
- b) understanding of the meaning of equality of opportunity and how the BWTMO puts its equal opportunities policies into practice;
- c) the BWTMO's obligations and the performance standards referred to in this Agreement; and
- d) the skills and knowledge required to enable the BWTMO to fulfil its obligations to the standards referred to in this Agreement or the statutory guidance.

**11.2** The BWTMO will have reasonable access to training run by the Council which is necessary for the BWTMO to fulfil its obligations under this Agreement, including training on new legislation, council policies and procedures and the Council's management systems which the BWTMO 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 BWTMO to fulfil its training obligations as set out in clause 11.1.

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

## **12. INFORMATION TO TENANTS**

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

## **13. CONFLICTS OF INTEREST**

13.1 The BWTMO will provide in its standing orders that a committee member, officer or employee of the BWTMO 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 BWTMO 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 BWTMO 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 BWTMO's main office. It will be open to inspection during the BWTMO'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 BWTMO to act as his or her representative in dealings with the Council, the Council will accept the BWTMO as such a representative.

- 14.2 Where the BWTMO 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 BWTMO 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 BWTMO 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 BWTMO'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 BWTMO 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. Each Schedule will contain an issue number and date indicating the date issued or last amended.

- 16.3 The BWTMO 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, the BWTMO 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 BWTMO will hold a Special General Meeting within twenty-eight (28) days to consider the giving of the three months' notice of termination of this Agreement under the provisions of clause 20.2.4 below.

17.2 Before the 31 December 2007 and at least every five years thereafter the BWTMO 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 BWTMO as manager of the Property; and
- b) whether:
  - i) the majority of those responding; and
  - ii) the majority of secure tenants responding,

wish the BWTMO 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 BWTMO to continue as manager of the Property, the BWTMO 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 BWTMO 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 BWTMO to continue as manager of the Property the BWTMO 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 BWTMO:
  - i) obtaining certification by an Approved Person that, in relation to additional management functions that the BWTMO wishes to exercise which are included as options in the Modular Management Agreement, the BWTMO has the required level of competence; and
  - ii) then giving the Council at least six 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 BWTMO, giving the Council at least six 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 BWTMO 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 BWTMO agreeing to vary the Agreement by selecting different options from the Modular Management Agreement provided that the new options do not give the BWTMO additional functions;
- e) by the Council and the BWTMO agreeing, under clause 10.2 of Chapter 2, that the Council will take over the Estate Services that have been provided by the BWTMO;
- 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 BWTMO 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 BWTMO 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 clause 3 of Chapter 6 in accordance with the provisions of clause 3.11.



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 BWTMO.

**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 BWTMO. 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 BWTMO 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;
- c) any cessation or reduction in funding from the Office of the Deputy Prime Minister to the Council in respect of the BWTMO's activities as an Arms Length Management Company (those Major Works functions under Chapter 2 clauses 4.1-4.2 and clause 6); or
- d) 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 BWTMOs which manage more than 2,500 homes to form their own smaller BWTMO;
- e) any notice of cessation by the BWTMO in exercising a management function on behalf of the EMB or the Council under Chapter 1 Schedule 1(a) or under Chapter 3 Schedule 3 and Chapter 5 clause 21;

- f) any notice of cessation by the Council in the appointment of the BWTMO to exercise a management function on behalf of the Council under Chapter 1 Schedule 1(a) or under Chapter 3 Schedule 3 and Chapter 5 clause 21;

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 and the management functions specified in this Agreement, from the date on which the Right to Buy or the Right to Enfranchise purchase is completed or in respect of (c) from the date the change in funding takes effect or in respect of (d) the relevant Start Date of the management agreement under the Right To Manage comes into force or in respect of (e) and (f) 12 months from the date of the notice.

## **19. FAILURE TO PERFORM**

- 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 BWTMO.
- 19.2 Subject to the provisions of clause 19.9, in the event of the BWTMO 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 BWTMO, the Council will work with the BWTMO 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 BWTMO is in agreement, the Council may, in the first instance, appoint an independent person to advise on the performance standards of the BWTMO, the action proposed by the Council, and the views of the BWTMO, and to recommend to the Council and the

BWTMO 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 BWTMO 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 BWTMO 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 BWTMO. Within 21 days of receipt of a Breach Notice the BWTMO 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 BWTMO why it cannot remedy the breach within this period, or does not accept the date specified by the BWTMO as the date by which the breach will be remedied, the Council may serve a Warning Notice, warning the BWTMO that unless the breach is remedied within seven days the functions specified will be removed from the functions being exercised by the BWTMO.
- 19.6 If the BWTMO has not corrected the breach within seven days of receiving the Warning Notice, the Council may in writing terminate the BWTMO's exercise of the functions specified in the Breach Notice and Warning Notice from a specified date. The BWTMO 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 BWTMO 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 BWTMO under this Agreement or its obligations under this Agreement, the BWTMO 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 BWTMO 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 BWTMO.
- 19.9 Where the Council is satisfied that there are serious failings of the BWTMO as described in clause 7.8 of Chapter 8, the Council may serve a Supervision Notice in respect of all of the BWTMO'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 BWTMO, in a case where a Special Review has not taken place, the BWTMO 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 BWTMO, 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 BWTMO 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 BWTMO 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 BWTMO, 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 BWTMO:

- 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 BWTMO 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 BWTMO 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 BWTMO, 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 BWTMO by the Council if the BWTMO has received a Warning Notice from the Council under the provisions of clause 19.5, and either:
- i) the BWTMO 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 BWTMO 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 BWTMO. The Council will give the BWTMO 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 BWTMO 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 BWTMO 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 BWTMO.
- 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 BWTMO 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 BWTMO 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 BWTMO to carry out its management functions under this Agreement that remain in the BWTMO 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 BWTMO 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 BWTMO will as soon as is reasonably practicable hand over to the Council any property whether or not it is listed under Schedule 1 which is owned by the Council and at the Council's option transfer to the Council at no charge all rights of title and interest in and to any other equipment, plant, materials and consumables used to operate in accordance with this Agreement.
- 20.11 If this Agreement ends the BWTMO will if requested novate or assign (the benefit and the burden) all or any contracts which remain in whole or in part to be performed to the Council or its nominee.

## **CHAPTER 2**

### **Repairs, Maintenance and Services Provision**

#### **1. FUNCTIONS OF THE BWTMO IN RESPECT OF RESPONSIVE AND PLANNED MAINTENANCE REPAIRS**

- 1.1** The BWTMO will exercise Management Functions in respect of the classes of Responsive and Planned Maintenance Repairs listed in Schedule 1 (Functions and Performance Standards of the BWTMO in respect of Repairs), being classes of repair that it is practicable for the BWTMO to carry out, subject to the provisions of clauses 8 and 9.
- 1.2** Nothing in this clause will impose upon the BWTMO 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 BWTMO 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 BWTMO carrying out the Responsive and Planned Maintenance Repairs it has agreed to carry out under this clause.

- 1.4 Not used.

## **2. FUNCTIONS OF THE COUNCIL IN RESPECT OF REPAIRS**

- 2.1 Clause not Included – Retained Responsive and Repair Responsibilities of the Council assumed to be nil.

## **3. FAILURE TO REPAIR**

- 3.1 In carrying out repairs under clause 1, the BWTMO will meet the standards and time scales agreed between it and the Council and set out in Schedule 1.

- 3.2 Clause not included.

- 3.3 Clause not included.

- 3.4 If, in the opinion of the Council, the BWTMO 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 BWTMO in writing of the repair required in a Repair Notice.

- 3.5 If a Repair Notice is served under 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 Council 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 BWTMO**

- 4.1 The BWTMO will draw up proposals for the capital programme for Major Works for cyclical redecoration and associated repairs, structural repairs, renewal of components, fixtures or fittings, and improvements to dwellings in accordance with the protocol contained in Schedule 2.



The proposal shall include the Major Works it intends to undertake and a detailed programme for the intended Major Works.

- 4.2 The BWTMO will consult any tenants, leaseholders and freeholders who may be affected by the proposed Major Works and will take their comments into account in finalising its request.
- 4.3 If the BWTMO decides that Major Works are necessary it shall prepare and approve Major Works within the level of financial resources made available to it by the Council.
- 4.4 The BWTMO will cooperate with the Council in respect of any Major Works proposed by the BWTMO which are affected by or combine housing revenue account capital subsidy and non-housing capital resource to integrate housing stock improvements with wider economic development and community regeneration.
- 4.5 The BWTMO will consult with tenants, leaseholders and freeholders as required over all Major Works proposals under this Agreement, complying with the requirements under sections 20 and 20ZA of the Landlord and Tenant Act 1985. The BWTMO will carry out statutory consultation in accordance with clause 15 of Chapter 7 and non-statutory consultation in accordance with clause 16 of Chapter 7. In finalising its response, the BWTMO will take into account any comments tenants, leaseholders or freeholders may make.
- 4.6 The BWTMO will have regard to any reasonable changes which the Council may suggest to the BWTMOs Major Works proposals.

## **5. REQUESTS FOR MAJOR WORKS BY THE COUNCIL**

- 5.1 The Council or the EMB 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.



- 5.2 If the Council or the EMB decides that Major Works are necessary or desirable they will inform the BWTMO and provide the BWTMO with details of the Council's or the EMB's proposals.
- 5.3 The Council and the EMB will give proper consideration to the BWTMO's response to Major Works proposals and to any changes which the BWTMO may suggest.

## **6. MAJOR WORKS**

- 6.1 The BWTMO 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 BWTMO to carry out such works.
- 6.2 Before carrying out the Major Works, the BWTMO 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 BWTMO 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 BWTMO does not consider a proposed increase to be sufficient, the BWTMO 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 if it still considers them to be necessary.
- 6.3 Clause not included.
- 6.4 Clause not included.
- 6.5 The BWTMO will not invite tenders or enter into a contract for any Major Works other than those submitted by it under clause 4.1 without the prior approval from the Council. The Council will not withhold or delay approval without good reason.

6.6 In fulfilling its obligations under this clause 6 the BWTMO will comply with clause 15 of Chapter 5 and the performance standards for entering into and supervising contracts for Major Works set out in Schedule 3.

6.7 Clause not included.

6.8 Clause not included.

## **7. PARTNERING CONTRACTS**

7.1 Clause not included.

## **8. REPLACEMENT REPAIRS**

Clause not included.

## **9. REPAIRS COVERED BY THE COUNCIL'S BUILDINGS INSURANCE**

9.1 The Council will administer all insurance claims for Insurance Repairs to the Property which arise from events which are covered by the risks the Council has insured against as set out in clause 7 of Chapter 1 (or which would normally be covered by buildings insurance had the Council not decided to cover such risks itself).

9.2 Clause not used.

9.3 If the BWTMO considers that a repair that falls within the list of repairs in Schedule 1 is an Insurance Repair, the BWTMO will immediately notify the Council in writing of that fact.

9.4 If the Council receives a notice from the BWTMO under clause 9.3 above or is otherwise aware that an Insurance Repair is needed, the Council will:

- a) authorise the BWTMO to undertake any emergency temporary repairs required to protect the Property or the safety, health or security of tenants and any other persons living in or visiting the Property; and

- b) ensure that any insurance claim is promptly made and where necessary pursued until approved by the insurer.

9.5 Immediately the Insurance Repair is accepted by the Insurer (or within 28 days of being notified of the Insurance Repair if the Insurance Repair relates to a risk the Council elected to cover itself (see Chapter 1 clause 7.2) the Council will authorise the BWTMO to carry out the repair.

9.6 Having received authorisation to carry out an Insurance Repair and carried out the repair, the BWTMO will submit the invoice for the Insurance Repair to the Council for payment. The Council will be responsible for paying invoices for Insurance Repairs and for recovering the cost of Insurance Repairs which are covered by the buildings insurance policy for the Property from the insurer.

9.7 The BWTMO 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**

10.1 The BWTMO agrees to provide the BWTMO's Estate Services listed in Schedule 1 (Functions and Performance Standards of the BWTMO and the Council in respect of Estate Services) and to comply with the performance standards set out in that Schedule.

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



Service of notice under this clause does not in itself end or alter the BWTMO's obligation under this Agreement to provide the BWTMO's Estate Services, but where the Council and the BWTMO agree that the BWTMO 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 BWTMO 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 BWTMO with adequate access to technical advice to enable the BWTMO to carry out its obligations under this Agreement.

## **12. RIGHT TO IMPROVE AND LEASEHOLDER IMPROVEMENTS**

- 12.1 The BWTMO and Council agree to follow the Improvements Policy and Procedure set out in Schedule 7 if the Council or the BWTMO 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 BWTMO 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 BWTMO 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**

If a tenant of a dwelling submits a Right to Repair Claim under the Right to Repair Regulations the Council and the BWTMO agree to follow the procedures set out in Schedule 8 (Right to Repair Policy and Procedure). The BWTMO 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.

## **CHAPTER 3**

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

#### **1. CONFIDENTIALITY AND PROCEDURES**

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

#### **2. RENT COLLECTION FROM TENANTS**

- 2.1 The BWTMO is authorised to collect 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 clauses 6 and 10 of Chapter 2 and collection of income from commercial property under Schedule 3.
- 2.2 All Rent received will be paid by the BWTMO 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 BWTMO 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; and
- b) confirm that all Rents received have been properly accounted for by reconciling the Rents received and banked with the net Rents due.

### **3. RENT ARREARS CONTROL**

- 3.1 The BWTMO 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 BWTMO to take legal proceedings under this clause where Rent arrears have arisen if the BWTMO is unable to recover arrears in accordance with the provisions of Schedule 1. In taking such action the BWTMO will act in accordance with the provisions of that Schedule. The BWTMO will notify the Council in writing within seven days if the BWTMO:
  - 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 BWTMO 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 BWTMO written reasons for the refusal or for the conditions imposed.
- 3.4 If the BWTMO enforces a court order for possession of any dwelling the BWTMO 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 STARTING DATE**

4.1 Not Used.

4.2 Not Used.

4.3 Not Used.

4.4 Not Used.

**5. FORMER TENANTS' ARREARS**

5.1 The BWTMO will manage the collection of debts of all former tenants.

5.2 Not Used.

5.3 The BWTMO will take action, including taking legal proceedings, to recover Former Tenants' Arrears in accordance with the provisions of Schedule 1.

5.4 The consent of the Council is required before the BWTMO can write off a former tenant's arrears that the BWTMO concludes cannot be recovered after taking action in accordance with the provisions of Schedule 1. The Council will not unreasonably withhold or delay consent to a request to write off a former tenant's arrears under the provisions of this clause.

**6. HOUSING BENEFIT PAYMENTS**

6.1 All Housing benefit payments due to tenants will be retained by the Council. For each Rent period and within the period provided for in Schedule 1, the Council will provide the BWTMO with an accurate statement of housing benefit payments payable to tenants. On receipt of the statement the BWTMO will credit housing benefit payments to the relevant tenant's Rent account within the period provided for in Schedule 1.



- 6.2 The BWTMO will take action to recover any arrears of Rent that arise as a result of errors in any housing benefit calculations or payments.

## **7. SETTING RENT PAYABLE BY TENANTS**

- 7.1 The Council will set the Rents, applying the same formula as it applies in setting the rents for similar dwellings to the Property dwellings in its own housing stock and in accordance with the Council's Rent Setting Policy.
- 7.2 In setting the Rents the Council will not (unless required to do so by statute) take account of:
- a) the rental value of any improvements to the Property dwellings financed by the BWTMO out of the BWTMO's Surplus Fund, (see clause 10 of Chapter 5); or
  - b) any other benefits which have or may come from the management of the Property dwellings by the BWTMO.
- 7.3 Where the BWTMO, after consultation with tenants, decides that additional services should be provided, or that additional services being provided should no longer be provided, the BWTMO 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 BWTMO decides to add the provision of additional Estate Services to its management functions (clause 10 of Chapter 2), the cost for providing the services will be included in the tenant service charge in the Rents and included in the Allowances (Chapter 5, clause 1).
- 7.4 The Council will notify the BWTMO 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 BWTMO for additional services under clause 7.3.

**7.6** The Council will give the BWTMO 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 BWTMO in a way which complies with the obligations set out in sections 24(1) and 24(3) of the Housing Act 1985 (that rents are reasonable and proportionate) and takes account of all other relevant considerations.

## **8. NOTIFICATION OF RENT CHANGES**

**8.1** The Council will give the BWTMO at least six weeks' written notice of any change in Rents.

**8.2** The BWTMO will give each tenant at least four weeks' written notice of any change in his or her Rent, or such longer period of notice as may be required by the tenancy.

## **9. PAYMENT TO THE COUNCIL OF RENT DUE**

**9.1** The BWTMO will pay to the Council the Rents as provided for and in the manner set out in clause 2.

**9.2** The Council will send one or more rent statements to the BWTMO in accordance with the provisions of Schedule 1. The rent statement will show the Net Rent amount due from the BWTMO for the previous quarter and the amount collected. The Net Rent will be calculated as follows:

**9.2.1** the Rent due for each rent period less:

- a) any Rents waived under clause 12;
- b) any housing benefit payments which the Council has notified the BWTMO are due in the period to tenants (see clause 6 above);
- c) in the first period of each Financial Year the Voids Percentage Amount for the coming year calculated in accordance with the provisions of clause 10;
- d) clause not included.

## **10. VOIDS ALLOWANCES**

- 10.1** In calculating the Net Rent at the end of the first quarter of each Financial Year the Voids Percentage Amount of the total money collectable by the BWTMO will be deducted as in clause 9.2.1c. The deduction is for rent losses from vacant dwellings while re-letting occurs and bad debts from Rent arrears which the BWTMO is unable to recover.
- 10.2** The Voids Percentage will be adjusted if the total amount collectable by the BWTMO from rents of dwellings changes during the Financial Year. The adjustment will be made in the rent demand under clause 9.2 at the end of the quarter in which the Rents were changed.
- 10.3** If the actual voids during any Financial Year result in a loss which is less than the Voids Percentage Amount, the BWTMO will be entitled to keep the balance of the Voids Percentage Amount. If the loss from actual voids during any Financial Year is greater than the Voids Percentage Amount, the BWTMO will be liable for the additional loss to the Council unless the Council expressly waives liability under clause 12.



**11. BAD DEBTS / WRITE OFFS**

- 11.1 The Council and the BWTMO agree to the procedure for dealing with bad debts and write-offs of former and current tenants set out in Schedule 1.

**12. VOIDS AND RENTS WAIVERS**

- 12.1 The BWTMO will not be liable for any Void Losses or loss of rental income which occur for the following reasons:

- a) a dwelling is void and unfit for occupation because of damage by fire or other risks covered by the Council's buildings insurance;
- b) Not used.
- c) a dwelling is void because the Council has not complied with the time limits specified in Chapter 6, clause 3;
- d) the BWTMO has, with the consent of or under instructions from the Council, kept one or more dwellings vacant for major repairs or improvements or for any other reason;
- e) the collection of Rent Arrears in a particular case has been handed back to the Council (see clause 3.4).

- 12.2 The BWTMO will give written notice to the Council claiming a voids waiver or rents waiver as soon as the BWTMO is aware that a case falls within clause 12.1.

- 12.3 The Council will waive:

- a) Void Losses in excess of the Voids Percentage Amount provided for in clause 10; and
- b) loss of rental income if the additional losses have occurred for any of the reasons set out in clause 12.1.



## **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 BWTMO will treat as strictly confidential all information in its possession about Service Charges accounts. Only the employees or officers of the BWTMO 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 BWTMO which has overall oversight of the management of Service Charges accounts, or to a general meeting of the BWTMO 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 BWTMO 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 BWTMO 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 BWTMO and the Council have agreed under clause 3, Option B, that the BWTMO calculate Service Charges, send out Service Charge demands and collect Service Charges, the BWTMO will treat the obligations of the Council under section 20 (service charge consultation), section 21 (regular statements of account) and section 22 (inspection etc. of documents) of the Landlord and Tenant Act 1985 (included all rules and regulations made thereunder) as its obligations, and act accordingly.

**3. SERVICE CHARGES: CALCULATION, SENDING OF DEMANDS AND COLLECTION**

**3.1** The BWTMO 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 Council will maintain its records and accounts books in such a way as will enable the BWTMO to comply with its obligations, by virtue of clause 2.2, 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 Council.

**3.3** The Council and the BWTMO 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 BWTMO will calculate the Service Charges within the periods set out in the Schedule, and provide the Council 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**

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

**5. SERVICE CHARGE AND GROUND RENT ARREARS**

- 5.1 The BWTMO 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 BWTMO 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**

- 6.1 For the avoidance of doubt, the BWTMO will be responsible for, and is authorised by the Council to administer and comply with all and any of the provisions of section 20 of the Landlord and Tenant Act 1985 (and all rules and regulations made thereunder), where the provisions touch or concern the performance or anticipated performance by the BWTMO of any of its obligations in chapter 2. In particular, and without prejudice to the generality of this delegation, the BWTMO shall be responsible for:
- i) drafting approving and serving any notices required to be served;
  - ii) having regard to any relevant observations that may be made in response to any such notices;
  - iii) obtaining estimates, specifications, drafting proposals;



in all cases (including prior to the BWTMO entering into qualifying and non-qualifying agreements, and where qualifying works are proposed to be carried out.

**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 BWTMO 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**

- 8.1 The BWTMO 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 Council will provide information in its possession to the BWTMO that is required by the BWTMO to enable it to comply with the provisions of clause 8.1.

**9. PAYMENT OF SERVICE CHARGES AND GROUND RENT TO THE COUNCIL**

- 9.1 The BWTMO will pay to the Council the Service Charges and Ground Rent it has collected, within the periods set out in the Schedule.



**10. FINANCIAL INCENTIVES AND PENALTIES IN RELATION TO  
COLLECTION OF SERVICE CHARGE ARREARS**

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

## **CHAPTER 5**

### **Financial Management**

#### **1. CALCULATION OF ALLOWANCES**

- 1.1** The Allowances to be paid by the Council to the BWTMO (whether directly or indirectly) under clause 2 shall be deemed to include all costs of providing the services described in this Agreement and 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, and the method of calculating the supported borrowing and ALMO allowance authorised from time to time by the Office of the Deputy Prime Minister for Arms Length Management of local authority housing utilising such data as are relevant for the purposes of such calculations; and
  - b)** the amount (if any) for additional services included at the BWTMO'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 and any ALMO settlement agreed by the ODPM with the Council.
- 1.3** The Council will give the BWTMO 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 BWTMO in accordance with the provisions of Schedule 1.

- 1.4 At least two months before the beginning of each Financial Year the BWTMO 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 BWTMO 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 BWTMO and the Council in accordance with the provisions of Schedule 1.

## **2. PAYMENT OF ALLOWANCES**

- 2.1 The Council will pay the BWTMO the Allowances in 12 equal monthly instalments 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 BWTMO under this Agreement.

**3. PAYMENT OF MANAGEMENT AND MAINTENANCE COSTS AND ADMINISTRATIVE EXPENSES INCURRED BY THE BWTMO**

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

**4. THE BWTMO'S BANKING ARRANGEMENTS**

- 4.1 The BWTMO will open any bank or building society accounts as it considers necessary. The BWTMO will inform the Council of any bank or building society accounts it opens.
- 4.2 The BWTMO 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 BWTMO's account will require a minimum of two signatories.
- 4.3 The BWTMO will notify the Council in writing of the account name and number into which the Council is to pay the Allowances.
- 4.4 If the Allowances include an amount to meet the costs of Major Works the Council agrees to allow to the BWTMO access to the Councils Major Works Account for this purpose .
- 4.5 Not Used.

**5. FINANCIAL CONTROL AND ACCOUNTING STANDARDS**

- 5.1 The BWTMO will conduct its financial affairs in accordance with the provisions set out in Schedule 2.



- 5.2 The BWTMO will account for income and expenditure in accordance with the accounting standards set out in Schedule 3 (Accounts and Audit).**
- 5.3 The BWTMO will provide the Council with the following financial information:**
- 1) the BWTMO's budget for the coming Financial Year before the beginning of each Financial Year, in accordance with the consolidated estimates timetable established in the Schedule 1 protocol;**
  - 2) the BWTMO's quarterly revenue report after the end of each quarter in accordance with the consolidated monitoring timetable established in the Schedule 1 protocol;**
  - 3) the BWTMO'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;**
  - 4) the BWTMO's auditor's management letter within one month of receipt; and**
  - 5) 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 BWTMO's correspondence, files, books and records of accounts that relate to the management of the Property dwellings and the BWTMO'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 BWTMO's Financial Year will be from 1st April to 31st March of the following year.

**7. RESTRICTION ON INVESTMENTS**

- 7.1 The BWTMO 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 BWTMO giving not more than 3 months' notice of withdrawal.

**8. RESERVE FUNDS**

- 8.1 The BWTMO will set up a Reserve Fund to meet the following potential liabilities:

- 1) anticipated costs in future years resulting from under-spending on repairs and services;
- 2) known commitments for future work in addition to the Major Works Account (if any); and
- 3) a contingency against costs arising from unforeseen circumstances.

The BWTMO'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 BWTMO's balance sheet at the end of each Financial Year.

- 8.2 The Reserve Fund will be used to meet costs in enabling the BWTMO 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**

**9.1 Not Used.**

**9.2 If a credit balance remains in the Councils Major Works accounts when this Agreement ends the balance will be available for use by the Council.**

**10. FINANCIAL REPORT AND SURPLUS FUND**

**10.1 Within six months of the end of each Financial Year the BWTMO will produce audited Annual Accounts for the past Financial Year which show:**

- 1) a statement of the BWTMO's income and expenditure;**
- 2) the assets and liabilities of the BWTMO, other than items included under paragraph a);**
- 3) Not Used.**
- 4) the Reserve Fund (if any); and**
- 5) 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 BWTMO will report on the Surplus Fund at its Annual General Meeting. The Surplus Fund will be shown on the BWTMO's balance sheet.**

**10.3 The Surplus Fund may be used by the BWTMO for any purpose permitted by the BWTMO'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 BWTMO 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 BWTMO 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 BWTMO directs. The balance in the Surplus Fund can be used by the BWTMO for any purpose permitted by the BWTMO's constitution.
- 10.8 The BWTMO 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 BWTMO is wound up or dissolved, any of the Surplus Fund remaining after satisfaction of all the BWTMO's debts and liabilities will be disposed of in accordance with the BWTMO's constitution. The BWTMO will inform the Council of the decision.

## **11. LOANS TO THE BWTMO**

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

## **12. INTEREST ON LATE PAYMENTS**

- 12.1 The BWTMO 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 BWTMO 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 BWTMO 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 BWTMO 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**

- 13.1 If any payment under this Agreement due from the BWTMO 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 BWTMO.
- 13.2 If any payment under this Agreement due from the Council to the BWTMO is late or withheld by more than one month the BWTMO 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 BWTMO will comply with the legal requirements to register with HM Customs and Excise for Value Added Tax.

**15. BWTMO CONTRACTS**

The BWTMO shall:

- 15.1 ensure that all contracts let under this Agreement to discharge the Council's functions shall contain such third party rights in favour of the Council as the Council's Director of Law and Administration may determine from time to time;
- 15.2 ensure that all contracts let under this Agreement to discharge the Council's functions comply with all reasonable requirements of the Council in respect of any or all of the Contracts;
- 15.3 monitor and review the performance of those carrying out the Contracts;
- 15.4 take all proper steps (but not including legal action or proceedings unless so required expressly in writing by the Council) to enforce the Contracts;
- 15.5 at the request of the Council, supply all information including copies of any documents to the Council;
- 15.6 at the request of the Council, liaise with the Council in respect of any renewal or re-letting of the Contracts.

## **CHAPTER 6**

### **Tenancy Management**

#### **1. INFORMATION TO HOUSING APPLICANTS**

- 1.1 The Council will provide information about BWTMOs in its literature.
- 1.2 The BWTMO 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.

#### **2. CONSULTATION BETWEEN THE BWTMO AND THE COUNCIL**

- 2.1 The Council will consult with the BWTMO before adopting or altering its allocation scheme under section 167 of the Housing Act 1996.
- 2.2 The BWTMO 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 BWTMO under clause 2.2.
- 2.4 The BWTMO 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 BWTMO may, if the Council so requests, monitor the operation of a Local Lettings Policy as it relates to the Property dwellings, and where the BWTMO does carry out such monitoring, it will keep the Council informed of its findings.

- 2.6 The BWTMO 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 BWTMO to liaise with the Crime and Disorder Reduction Partnership, to ensure that the manner in which the BWTMO 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**

- 3.1 The BWTMO 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 BWTMO will obtain a list of those persons from the Council's Choice-Based Letting System and such information about them as it regards as relevant and request the BWTMO to select one of them to be the tenant of the vacant Property dwelling.
- 3.3 The BWTMO will advertise vacant properties and 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 BWTMO 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, require the BWTMO to allocate a specific Property dwelling to that person, provided that the BWTMO 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 required the BWTMO to make an allocation in accordance with the provisions of clause 3.6, it will give reasons for its decision to the BWTMO.
- 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 BWTMO is not selecting tenants of vacant Property dwellings in a fair and proper manner, it will request the BWTMO 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 BWTMO 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 BWTMO.

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

#### **4. TRANSFERS**

- 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 BWTMO 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**

- 5.1 The BWTMO will monitor introductory tenancies in accordance with the procedure set out in Schedule 3.

#### **6. VARIATIONS TO THE TENANCY AGREEMENT**

- 6.1 The Council or the BWTMO can propose changes (other than changes to Rent, Chapter 3, clause 7) to the terms of the Tenancy Agreement by serving on the other party a written Tenancy Variation Notice detailing the changes proposed.
- 6.2 A Tenancy Variation Notice will be served at least 56 days in advance of the date on which it is intended to serve a preliminary notice of variation on secure tenants required by section 103(2) of the Housing Act 1985.
- 6.3 If a Tenancy Variation Notice is served on the Council by the BWTMO the Council will within 28 days of receipt of the notice:
- (a) consent in writing to the changes proposed by the BWTMO;

- (b) amend the BWTMO's proposed changes, giving written reasons for the amendments, and consent in writing to the amended changes; or
- (c) inform the BWTMO in writing of the Council's rejection of the changes proposed and the reasons for the rejection.

- 6.4 If the Council serves a Tenancy Variation Notice on the BWTMO, the BWTMO 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 BWTMO's views before serving the preliminary notice of variation of tenancy on secure tenants.
- 6.5 If the Council proposes changes, it will carry out the tenant consultation and service of notices in accordance with the provisions of section 103 of the Housing Act 1985 and the provisions set out in Schedule 4 (Tenancy Agreement Changes Procedure).
- 6.6 If the BWTMO proposes changes and the Council has consented to those changes, the BWTMO will carry out the tenant consultation and service of notices in accordance with the provisions of section 103 of the Housing Act 1985 and the provisions set out in Schedule 4.
- 6.7 If, where the BWTMO has proposed changes, the majority of secure tenants do not wish for the BWTMO to represent them during the consultation process under section 103 of the Housing Act 1985, the secure tenants may choose another body to represent them during that consultation process.
- 6.8 The new Tenancy Agreement with the date that it comes into effect will then be substituted for the former Tenancy Agreement at Annex A.

## **7. BREACH OF A TENANCY AGREEMENT, TERM OF A LEASE, OR COVENANT IN A FREEHOLD TRANSFER**

- 7.1 In carrying out its management functions under this Agreement, the



BWTMO 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 BWTMO 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 BWTMO 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 BWTMO will not take action under clause 6.3 unless it has first taken reasonable steps to remedy the alleged breach and, if the steps taken by the BWTMO 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 BWTMO will within seven days of taking any of the actions under clause 6.3 inform the Council in writing, in accordance with the provisions of Schedule 5.

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

**7.6** The BWTMO 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**

**8.1** The BWTMO 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**

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

**10. UNLAWFUL OCCUPATION**

- 10.1 The Council will inform the BWTMO in writing, providing evidence, if the Council considers that a Property dwelling is sublet without consent or occupied by persons who have no legal right to live in the dwelling.
- 10.2 If the BWTMO:
- (a) has reason to believe that a Property dwelling is sublet without consent or occupied unlawfully; or
  - (b) receives a report from the Council that the Council considers that a Property dwelling is occupied unlawfully,

the BWTMO 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 any action the BWTMO intends to take.

10.3 If, having carried out the investigation, the BWTMO decides that the dwelling is unlawfully occupied the BWTMO is authorised to take such legal action as may be necessary to end the unlawful occupation.

## **11. VOID DWELLINGS**

11.1 The BWTMO will inform tenants that tenants wishing to end their tenancy should inform the BWTMO, and will manage any Property dwelling that becomes and remains vacant for any reason.

11.2 The BWTMO 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 BWTMO 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**

12.1 The BWTMO 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**

13.1 The BWTMO 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**

- 14.1 The BWTMO 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 BWTMO will, in deciding whether to give consent to subletting, act in accordance with the provisions of Schedule 10. The BWTMO will, on request, provide any tenant of a Property dwelling with a copy of the current Subletting Policy free of charge.
- 14.3 Each year the BWTMO 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 BWTMO shall provide that information.

#### **15. RIGHT OF SUCCESSION**

- 15.1 The BWTMO 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 BWTMO 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 BWTMO.
- 15.2 The BWTMO 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 BWTMO 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 BWTMO intends to accept the claim. The BWTMO 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 BWTMO 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 BWTMO has accepted the Right of Succession, request the BWTMO 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 BWTMO has refused the Right of Succession, request the BWTMO 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 BWTMO.

## **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 BWTMO 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 BWTMO 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 BWTMO and the Council are unable to reach agreement under clause 15.3, the provisions of clause 18 of Chapter 7 will be applied.

## **17. RIGHT TO BUY AND SALES**

- 17.1 The Council will consult the BWTMO about the general terms and conditions of sale of Property dwellings. The Council will:

- (a) provide the BWTMO with a copy of the terms and conditions of sale;
- (b) give the BWTMO at least one month's advance written notice of any proposed change to the terms and conditions of sale; and
- (c) keep the BWTMO informed of the progress of the claim at each major stage of the Right to Buy process.

- 17.2 If a tenant of a Property dwelling serves notice claiming to exercise the Right to Buy on the BWTMO, the BWTMO will within 14 days of receipt of the notice inform the Council in writing that the notice has been received. The Council will keep the BWTMO informed of the progress of the claim at each major stage.

- 17.3 The BWTMO is authorised to receive notices from secure tenants of Property dwellings claiming to exercise the Right to Buy.

- 17.4 The BWTMO will:

- (a) give a secure tenant a form complying with section 176 of the Housing Act 1985 to exercise the Right to Buy within 7 days of receiving the request;

- (b) keep a register of such requests received, showing date of receipt and the date on which the form was sent or given to the tenant;
- (c) within two working days of receipt, send to the Council any notice claiming to exercise the Right to Buy; and
- (d) keep a register of completed forms received, with a note of the date a form was received, and pass this information to the Council to enable the Council to calculate the relevant time for the purposes of section 122 of the Housing Act 1985.

17.5 The Council accepts that the relevant time for the purposes of section 122 of the Housing Act 1985 is the date of receipt by the BWTMO of the notice referred to in clause 17.4 c).

17.6 The Council will within 14 days notify the BWTMO 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.

- 17.7 The BWTMO will, within 14 days of receiving a written request, supply the Council with any information the Council may reasonably require in order to comply with its obligations under Part 5 of the Housing Act 1985.
- 17.8 The BWTMO will inform the Council within 7 days of commencing possession proceedings that it has done so.
- 17.9 The BWTMO will 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 a notice to exercise the Right to Buy under clause 17.2.
- 17.10 The Council will give the BWTMO at least seven days notice in writing of the expected completion date of the sale of any Property dwelling under Part 5 of the Housing Act 1985. On receiving this notice the BWTMO will immediately notify the Council in writing of any arrears of Rent.
- 17.11 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 use reasonable endeavours to recover from the tenant any arrears notified to the Council under clause 17.10.



**17.12** Where the Council fails to follow the procedure or fails to consult the BWTMO 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**

**18.1** The BWTMO 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 BWTMO 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 BWTMO 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.



## **20. TENANTS COMPACT**

The Council has a partnership with its tenants and leaseholders and to further this relationship the BWTMO will honour its own Tenant Compact so as to support and encourage tenant involvement. The initial form of the BWTMO's Tenant Compact is at Annex C and will include sufficient resources to ensure that the objectives of the BWTMO's Tenants Compact are met.

- 20.1 The BWTMO's Tenants Compact will be amended from time to time so far as necessary to comply with all statutory requirements and other official guidance issued from time to time and follow best professional practice.
- 20.2 The BWTMO's Tenants Compact objectives will be reviewed and consulted upon annually and sufficient resources will be provided to deliver any agreed objectives.
- 20.3 The BWTMO's Tenants Compact will include strategies for involving 'difficult to reach' groups and those tenants who do not normally get involved in the management of their homes.
- 20.4 A summary of the Tenants Compact will be provided to the Council for approval and on receipt of approval will be forwarded to every household affected.

## **21. RECOGNITION OF RESIDENTS' ASSOCIATIONS**

- 21.1 The BWTMO shall be authorised (a) to refuse to grant or (b) to grant recognition where any such tenants' association which qualifies under the terms of Section 29 of the Landlord and Tenant Act 1985 ("the Act") applies for it, in accordance with the following provisions.
- 21.2 Upon receipt of an application for recognition, the BWTMO shall forward the application to the Council within a period of 7 days from receipt, and will then consider any comments or views expressed by

the Council on the application which are received by the BWTMO within a further 14 days, and before reaching any decision.

- 21.3 When the BWTMO reaches a decision it shall inform both the secretary of the tenants' association and the Council in writing. If the decision is to grant recognition, the BWTMO must provide to both a notice in writing complying with section 29(1)(a) of the above Act.
- 21.4 At any time where the Council has concerns about the continued recognition of any recognized tenants' association it shall inform the BWTMO of these concerns in writing and, should the Council reasonably require, the BWTMO shall be required to give notice in writing to the recognized tenants' association withdrawing recognition in accordance with section 29(2) of the above Act.

## **22. COMMERCIAL PROPERTY MANAGEMENT**

- 22.1 The BWTMO is responsible for all day to day estate management issues which may arise from the management of the Commercial Property shown on the schedule in Chapter 1. The schedule will be updated annually by the BWTMO and a copy will be provided to the Council. This is also to include all garages, hardstandings and parking spaces ancillary to the Property.
- 22.2 The BWTMO shall, subject to the Council's planning policies, optimise the use of the Commercial Property for the benefit of tenants, lessees and the Housing Revenue Account.
- 22.3 In undertaking its responsibilities, the BWTMO must ensure that whether it undertakes the above work from within its own staff or from an external source that the personnel engaged on providing this service are of an acceptable standard and calibre.
- 22.4 The Council retains responsibility for the following:

- (a) Any strategic decisions concerning the proposed acquisition or disposal of any Commercial Property; before reaching a decision on any acquisition or disposal the Council will consult with the BWTMO on any such proposals which are likely to affect the management of these properties.
- (b) Where the Council wishes to occupy any of the properties listed in the appendix (for its own use or for the use of a voluntary organisation) it shall consult with and give consideration to the comments of the BWTMO and the relevant Tenants' Association. Where the Council occupies a property for its own use or for the use of a voluntary organisation it is agreed that an open market rent shall be assessed by the Borough Valuer for each property. This rent will be credited by the Council to the Housing Revenue Account.
- (c) The Council may require all car park spaces not required by local tenants and leaseholders to be made available to support the Council's strategic traffic policy of providing off-street public car parking.

**22.5** In its responsibility for estate management, the BWTMO is authorised to undertake the following:

- (a) Identifying and marketing of vacant property as soon as it becomes available.
- (b) Identifying any land or property capable of securing additional rental revenue for the Housing Revenue Account.
- (c) Where appropriate identifying trades and uses and selecting lessees in accordance with the Council's Neighbourhood shopping policy.
- (d) Undertaking the maintenance of all properties and in particular carrying out all repairs and decorations to the properties as and



when required where such properties are vacant or where such work is not the responsibility of the occupier.

- (e) Undertaking repairs and maintenance on the Commercial Property and collecting any contributions due from the commercial lessees.
- (f) When appropriate undertaking all enquiries to ensure any lessee or proposed lessee is financially viable.
- (g) Attending any arbitration proceedings including giving evidence at any legal disputes at Court.

**22.6** In undertaking these responsibilities, the BWTMO shall maintain a land register of all the Commercial Property interests, including any non-Council land which the BWTMO take on leasehold.

Where Notices are served upon the Council, the Council shall without delay pass the Notices to the BWTMO. The BWTMO shall respond to the Notices within the required time limits.

In its responsibility for lease management, the BWTMO is authorised to undertake the following:

- (a) Negotiation and settlement of all rent reviews.
- (b) Negotiation and settlement of all lease terminations and surrenders.
- (c) Negotiation and settlement of all licences and tenancy agreements.
- (d) Negotiation and settlement of all easements, rights of way and any other minor commercial property matters.
- (e) Negotiating terms for various licences and easements in respect of matters such as filming on Council property, fire escape routes, advertising hoardings and all other temporary uses of land and buildings.



- (f) Ensuring all necessary Notices are served within the statutory time limits.
- (g) Ensuring all occupiers conform to the terms and conditions of their lease.
- (h) Taking action for breach of leases discovered prior to instructing solicitors.

**22.7 The BWTMO shall report to the Council for approval of the following:**

- (a) Negotiation and settlement of all lease renewals.
- (b) Negotiation and settlement of all new lettings.
- (c) Approving alterations to existing leases including for example such matters as change of use and assignment.

In so doing, the BWTMO shall provide the Council with sufficient information to enable it to consider the proposed leases and lettings.

The BWTMO shall also present to the Council, within four weeks of the end of each quarter, a report setting out details of all activity undertaken by the BWTMO in respect of the Commercial Property in that quarter.

**22.8 Estate and lease management of the Commercial Property must be undertaken in an efficient, effective and economic manner to the reasonable satisfaction of the Council and in particular to conform with the performance indicators listed below.**

- (a) To seek to optimise the use of Commercial Property for the benefit of tenants, lessees and the Housing Revenue Account.
- (b) To agree terms for rent and lease renewals within three months before the relevant date or to have considered referring the matter to arbitration or Court as appropriate.

- (c) To seek to minimise rent arrears on the Commercial Property.
- (d) To seek to minimise the period a property remains vacant.
- (e) To undertake all estate management tasks in a professional manner.
- (f) To provide the Council with any information reasonably requested pertaining to the Commercial Property.

## **CHAPTER 7**

### **Staffing and Management of the Relationship between the BWTMO and the Council**

#### **1. THE TRANSFER OF STAFF FROM THE COUNCIL TO THE BWTMO WHERE THERE IS A TRANSFER OF AN UNDERTAKING BY VIRTUE OF THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 1981**

1.1 The Council agrees that there was a transfer of an undertaking under the agreements with the BWTMO referred to in the Articles of Agreement by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 1981 and the staff had an automatic right to transfer to the employment of the BWTMO on the same terms and conditions as they had with the Council.

a) Not Used.

b) Not Used.

c) Not Used.

d) Not Used.

1.2 Not Used.

1.3 The BWTMO Staff continue to participate in the Local Government Pension Scheme ("the Scheme") and new BWTMO staff will be offered membership in accordance with the rules of the Scheme. The BWTMO will enter into and comply with the conditions of the Council's Pensions Admission Agreement.

**2. EMPLOYMENT OF STAFF (OTHER THAN THOSE TRANSFERRING UNDER CLAUSE 1)**

2.1 The duties of any staff employed by the BWTMO and their terms and conditions of employment (including salaries and rates of pay) will be decided by the BWTMO. The BWTMO'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 BWTMO will comply with:

- a) the BWTMO's Equal Opportunities Policy and Procedures (see Chapter 1 clause 10); and
- b) the obligations imposed by statute.

**3. SECONDMENT OF BWTMO STAFF TO THE LANCASTER WEST ESTATE MANAGEMENT BOARD (EMB)**

3.1 The BWTMO will second staff to the EMB, in order to fulfil the Council's obligations under its separate agreement with the EMB (see Chapter 1 Appendix 1A). The posts involved in these secondments are listed within Volume 2 Chapter 7 schedule 2 of the EMB MMA. Individual post holders may change from time to time but will all be BWTMO employees, ultimately responsible to the BWTMO Chief Executive. The arrangement will continue until terminated by the EMB giving reasonable notice the Council and the BWTMO .

**4. EMPLOYMENT OF CONTRACTORS**

4.1 The BWTMO will engage contractors to provide the services the BWTMO considers it needs to contract out in order to fulfil its obligations under this Agreement. The BWTMO will not enter into a contract with any contractor which is not in accordance with its standing orders and this Agreement.

4.2 The BWTMO will only appoint contractors who:



- a) have the capacity to do work required by the BWTMO to an acceptable standard of quality;
- b) have adequate public and employer's liability insurance, or professional indemnity insurance if appropriate;
- c) give the BWTMO 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 BWTMO will only enter into a contract for management, support, repairs or other services, or for Major Works, with a contractor in accordance with the terms of this Agreement.

4.4 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 BWTMO has access to all the Council officers with whom the BWTMO 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 BWTMO 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 BWTMO. The Liaison Officer will be the BWTMO's first point of contact on day-to-day matters concerning the operation of this Agreement and the obligations of the BWTMO 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 BWTMO change the Liaison Officer.
- 6.3 If invited to do so by the BWTMO, the Liaison Officer may attend and speak (but not vote) at all meetings of the BWTMO, its committees or subcommittees. The BWTMO 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 BWTMO 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 BWTMO will nominate a person who may be a member of the BWTMO Board to be the BWTMO Liaison Officer. The BWTMO 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 BWTMO and the Council under this Agreement.

- 6.6 The BWTMO may change the BWTMO Liaison Officer by written notice to the Council.

## **7. TMO LIAISON COMMITTEE**

- 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 BWTMO may send representatives to each meeting of the TMO Liaison Committee.
- 7.4 The BWTMO will be entitled to meet the Council's Representatives other than at a TMO Liaison Committee meeting at least once a year.

## **8. THE COUNCIL'S NOMINEE**

- 8.1 The Council may nominate five elected Councillors (or such greater number as the BWTMO requests, provided that that number is less than the number of BWTMO members on the BWTMO Board) to serve as a full voting member or full voting members of any BWTMO Board.
- 8.2 The Council will ensure that any nominee will act in the BWTMO's best interests and will support and assist the BWTMO in exercising its management functions under this Agreement.
- 8.3 The BWTMO will co-opt any person nominated by the Council under this clause to serve as a full voting member of the BWTMO Board to which the person has been nominated.



**8.4** Any nomination by the Council under this clause will be in writing and will state:

- a) the name and address of the person nominated;
- b) and the length of time (not exceeding three years without re-nomination) for which the person is to serve as the Council's nominee.

**8.5** Any person nominated by the Council under this clause to serve on the BWTMO Board may attend and speak (but not vote) at general meetings of the BWTMO.

**9. HELP TO THE BWTMO**

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

**9.2** Where a request for help is made by the BWTMO under this clause the Council will consider the BWTMO's request and give the BWTMO 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 BWTMO'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 BWTMO.



- 9.4 The Council agrees to respond to all correspondence from the BWTMO 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 BWTMO 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) Chapter 6, clause 17 (notices relating to Right to Buy applications); and
- e) Chapter 7, clause 18 (notices relating to dispute or arbitration).

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 BWTMO'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 BWTMO 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 BWTMO under the terms of this Agreement is to be sent to the Secretary of the BWTMO at the BWTMO's Registered Office.

**11. MISDIRECTED NOTICES**

11.1 The BWTMO will within five working days pass on to the Council any notice or application concerning a Property dwelling served on the BWTMO 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 BWTMO any notice or application concerning a Property dwelling served on the Council in respect of a matter for which the BWTMO exercises management functions under this Agreement.

**12. NOTICE OF LEGAL PROCEEDINGS**

12.1 The Council will within five working days notify the BWTMO of the commencement of any legal proceedings that may affect the exercise of the BWTMO'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 BWTMO 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 BWTMO 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 BWTMO with any information the BWTMO 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 BWTMO 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 BWTMO will inform the Council in writing as soon as possible if:

- a) the BWTMO resolves to investigate a transfer of ownership of the Property; and
- b) the BWTMO 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 BWTMO 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**

- 15.1 Subject to the provisions of clauses 6 and 7 of Chapter 4 and of clause 15.2, the BWTMO will carry out consultation with tenants or leaseholders required by statute ("statutory consultation").



- 15.2 If on any particular occasion the Council wishes to consult tenants or leaseholders directly, the Council will request the BWTMO's consent. Such consent will not be withheld or delayed without good reason.
- 15.3 If the Council wishes the BWTMO to carry out statutory consultation on a particular matter the Council will send to the BWTMO a written request which:
- a) informs the BWTMO of the matter or matters on which the Council wishes to consult; and
  - b) states the minimum length of the consultation period and the date by which the BWTMO is to complete the consultation.
- 15.4 The Council will provide the BWTMO with such additional information or assistance as the BWTMO may require in consulting tenants or leaseholders.
- 15.5 The BWTMO will after receiving a request either:
- a) consult tenants and leaseholders by taking such action as may be necessary to comply with the Council's request; or
  - b) within 14 days of receipt of the request inform the Council that it does not wish to consult on this matter and authorise the Council to consult directly.
- 15.6 The Council will meet any extra costs not included in the Allowances and reasonably incurred by the BWTMO in carrying out any consultation under this clause.

## **16. NON-STATUTORY CONSULTATION**

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



- 16.2 Where the Council or the BWTMO 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 BWTMO'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 BWTMO 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 BWTMO 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 BWTMO'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 BWTMO arises out of the operation of this Agreement, the Council or, as the case may be, the BWTMO 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 BWTMO 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 BWTMO; 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.

**18.3** If the Council serves a Notice of Dispute on the BWTMO, the BWTMO will, within 14 days of receiving it, consider the dispute at the BWTMO Board. The BWTMO 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 BWTMO Board Meeting.

**18.4** If the Council is not satisfied with the BWTMO's response to the Notice of Dispute, the Council may in writing:

- a) request the BWTMO 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 BWTMO to convene a Special General Meeting to consider the dispute. The BWTMO 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 BWTMO's constitution for such a meeting. The BWTMO 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 BWTMO 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 BWTMO 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 BWTMO is not satisfied with the Council's response to the Notice of Dispute, the BWTMO 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 BWTMO 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 BWTMO 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 BWTMO and the Council.

**18.10** Nothing in this clause will limit the right of the Council or the BWTMO to pursue other lawful remedies, including ending this Agreement under clause 20 of Chapter 1, in the event of the Council or the BWTMO

failing to carry out their respective management functions under this Agreement.

**19. INFORMATION TO THE SECRETARY OF STATE**

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



## **CHAPTER 8**

### **Performance, Monitoring and Reviewing of Standards**

#### **1. THE BWTMO'S PERFORMANCE STANDARDS**

- 1.1 In carrying out its management functions under this Agreement the BWTMO agrees to comply with the policies, procedures and performance standards set out in the Schedules to this Agreement.
- 1.2 To ensure that the BWTMO complies with the provisions of clause 1.1 the BWTMO agrees to set the BWTMO's Key Performance Indicators ("KPIs"), which enable the BWTMO 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 BWTMO 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 BWTMO'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 BWTMO has managed the Property dwellings under this Agreement, the size of the BWTMO 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 BWTMO 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 BWTMO.
- 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 BWTMO will provide such information and access to records as the Council may reasonably need to monitor the BWTMO's performance.
- 3.2 The Council will hold a Monitoring and Development Meeting with the BWTMO at least once every six months for the purposes of:
  - a) monitoring the performance of the BWTMO 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 BWTMO's and its own performance and will send copies of the report to the BWTMO 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 BWTMO under clause 3.2 are not so onerous as to prevent the BWTMO from fulfilling its obligations under this Agreement or to impair its ability to fulfil those obligations.

#### **4. ANNUAL REVIEW**

- 4.1 Within three months of the end of the Financial Year the BWTMO will produce a BWTMO's Performance Report for the previous Financial Year on the performance of the BWTMO and the Council in comparison with the Key Performance Indicators. Where the BWTMO 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 BWTMO to publish the BWTMO's Performance Report.
- 4.2 The BWTMO will send a copy of the BWTMO's Performance Report to the Council and to every tenant, leaseholder and freeholder. The



BWTMO 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 BWTMO's Performance Report, the Council and the BWTMO 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 BWTMO's or the Council's performance. Nothing in this clause prevents the Council or the BWTMO 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 BWTMO will produce a report of the meeting. This report will be presented to the BWTMO'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 BWTMO's Equal Opportunities Policy and Procedures and report to the BWTMO's committee on its findings. The BWTMO will consider the report and make such changes as the Council may reasonably require ensuring that the BWTMO 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 BWTMO is exercising under this Agreement or a Best Value review of its BWTMOs, the BWTMO 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 BWTMO 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 BWTMO in carrying out its management functions under this Agreement by carrying out a Five Year Review. In monitoring the BWTMO's performance the Council will pay particular attention to:

- a) the democratic standards of control and the compliance with the BWTMO'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 BWTMO's administration and the use of the BWTMO'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 BWTMO'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 BWTMO'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 BWTMO 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 BWTMO;
- b) make positive recommendations as to the action and practical steps which the BWTMO 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 BWTMO 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 BWTMO will respond in writing to the Review Report setting out:

- a) the recommendations for action which the BWTMO accepts, setting out the BWTMO's plan and periods within which those recommendations will be implemented; and
- b) the findings and recommendations (if any) with which the BWTMO 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 BWTMO disagrees with the Review Report and responds to it under clause 7.4 b) , the Council will, within one month of receiving the BWTMO's response, give reasoned consideration to the BWTMO's response and, in writing, either:
- a)** accept the BWTMO's response and amend the findings and recommendations for action in the Review Report; or
  - b)** give reasons why the BWTMO's response is not accepted by the Council and require the BWTMO, within one month, to submit its written plan for implementing the recommendations.
- 7.6** If a disagreement remains between the Council and the BWTMO 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 BWTMO before a decision under clause 17 of Chapter 1 as to whether the BWTMO 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 BWTMO, 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 BWTMO 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.

The carrying out of a Special Review does not prevent the Council from taking action against the BWTMO 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 **BWTMO** to carry out the **BWTMO'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**, the **ALMO** allowance and the amount for additional services included at the **BWTMO's** request.

#### **Annual Accounts**

(Chapter 5, clause 10, Option B)

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

#### **ALMO**

(Title Page, Chapter 1 clause 4 and Chapter 5 clause 1)

The **BWTMO** is recognised by the Approved Person as an Arms Length Management Organisation

#### **Annual Review**

(Chapter 8, clause 4)

Annual review by the Council and the **BWTMO** of the **BWTMO's** and the Council's performance during the previous **Financial Year**.

**Annual Review Meeting**

(Chapter 8, clause 4)

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

**Anti-Social Behaviour Policy and Procedures**

(Chapter 6, clause 2)

Clause not used.

**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 **BWTMO** 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 **BWTMO** 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 **BWTMO** 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 **BWTMO** that the **BWTMO** 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 **BWTMO**. A **Breach Notice** will normally only be served after failure by the **BWTMO** to implement an improvement plan.

**Breach**

(Chapter 6, clause 8, Option B)

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

**BWTMO**

(Title Page)

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

**BWTMO's Approved List**

(Chapter 7, clause 4)

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

**BWTMO Committee**

(Chapter 7, clause 8)

A Committee of the **BWTMO** properly constituted under the **BWTMO's Constitution**.

**BWTMO's Key Performance Indicators**

(Chapter 8, clause 1)

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

**BWTMO Liaison Committee**

(Chapter 7, clause 7)

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

**BWTMO's Performance Report**

(Chapter 8, clause 4)

The report produced within three months of the end of the **Financial Year** by the **BWTMO**, which compares the **BWTMOs** and the Council performance against their respective key performance indicators.

**BWTMO's Registered Office**

(Chapter 7, clause 10)

The registered office of the **BWTMO**, which all notices required by the Agreement that are sent by post are to be sent.

**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)

Clause not used.

**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**

Clause not used.

**Council's Approved List**

Clause not used.

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

**Estate Services**

(Chapter 2, clause 10)

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

**Failure Notice**

(Chapter 1, clause 19)

Written notice from the **BWTMO** 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 **BWTMO** or its obligations under the Agreement.

**Financial Procedures**

(Chapter 5, clause 2)

The agreement between the Council and the **BWTMO** as to the financial procedures to be operated by the **BWTMO**, set out in Schedule 2.

**Financial Report**

(Chapter 5, clause 10, Option A)

Clause not used.

**Financial Year**

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

The **BWTMO'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 **BWTMO** every 2 to 5 years.

**Float**

Clause not used.

**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 **BWTMO** to improve the **BWTMO'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 **BWTMO** 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 BWTMO 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 **BWTMO**. 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 **BWTMO** 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 **BWTMO** 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 **BWTMO** 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 **BWTMO** 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 **BWTMO** 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 **BWTMO** held at least once every six months to monitor the performance of the **BWTMO** 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 **BWTMO** to the Council at the end of each quarter, as shown in the rent demand sent to the **BWTMO** by the Council.

**Nominated Bank**

(Chapter 5, clause 12)

..... (name of Bank)

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

**Notice of Dispute**

(Chapter 7, clause 18)

A written notice served either by the Council on the **BWTMO** or by the **BWTMO** 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**

Clause not used.

**Partnering Contract**

Clause not used.

**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 which shall where the context so admits include the Commercial Property.

**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 **BWTMO** 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 **BWTMO** that the **BWTMO** 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 **BWTMO** to meet specified potential liabilities.

**Residents' Disputes Policy and Procedure**

Clause not used.

**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 **BWTMO** 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 **BWTMOs** 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 BWTMO 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 **BWTMO** 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 **BWTMO** 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 **BWTMO**.

**Starting Date**

(Chapter 1, clause 5)

The Management Agreement starts on 1<sup>st</sup> April 2006.

**Starting Date Arrears**

(Chapter 3, clause 4)

The amount owed by tenants in arrears at the **Starting Date**, which the **BWTMO** 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 **BWTMO** 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 **BWTMO** with the effect of restoring to the **BWTMO** 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 **BWTMO**. It is shown either on the Financial Report prepared by the Council (if clause 10, Option A is used) or in the **BWTMO'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 **BWTMO** 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**.

**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 **BWTMO**.

**Void Losses**

(Chapter 3, clause 12, Option B)

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

**Voids Percentage**

(Chapter 3, clause 10) .....%

The percentage of the total amount of money collectable by the **BWTMO** on behalf of the Council allowed for rent losses from dwellings that remain empty while reletting occurs.

**Voids Percentage Amount**

(Chapter 3, clause 9)

The amount allowed for rent losses from dwellings that remain empty while re-letting occurs, calculated from the **Voids Percentage**.

**Warning Notice**

(Chapter 1, clause 19)

If the **BWTMO** fails to rectify a problem after a **Breach Notice** the Council can issue a further written notice to the **BWTMO** (a **Warning Notice**) warning the **BWTMO** 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 **BWTMO**.



**Working day**

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