

TENANT MANAGEMENT ORGANISATION

**Modular Management Agreement for
Tenant Management Organisations**

VOLUME 1: The Agreement

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This agreement

is made the day of 2015

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 TMO” in this Agreement)

This Agreement is made under section 27 of the Housing Act 1985 and the Housing (Right to Manage) (England) Regulations 2012.

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

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

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

The Council and the TMO agree to act in accordance with the terms of this Agreement.

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

Signed Borough Solicitor /Chief
Executive

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

Signed TMO Board Member

Signed TMO Board Member / TMO
Company Secretary

This Modular Management Agreement (“MMA”) for Tenant Management Organisations is approved by the Secretary of State under regulation 16(2) of the Housing (Right to Manage) (England) Regulations 2012, and replaces that approved in 2008 which replaced that approved in 1994. Clause 18(1)(f) of Chapter 1 of the 1994 MMA permits the TMO and the Council to agree to vary the agreement which they entered into on 28 February 1996 as amended on the 12th of June 2006 to conform to this MMA.

The parties have agreed that from the Start Date of this MMA will supersede the MMA agreed on 12th June 2006. This MMA takes effect on the Start Date but the parties’ existing rights and liabilities under the 1994 and 2006 MMAs (as amended) remain unaffected.

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

- i) the non-optional clauses of the MMA;
- ii) the optional clauses in the MMA chosen by the parties, within the constraints specified in the MMA;
- iii) Annexes;
- iv) the Schedules 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 TMO.

2. THE COUNCIL AND THE PROPERTY

- 2.1 The Council is a local housing authority under Part 2 of the Housing Act 1985. The Council is the freehold or leasehold owner of the Property which constitutes the subject-matter of this Agreement and has management functions in respect of it. The dwellings and land constituting the Property are listed in Schedule 1 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.

3. THE TMO

- 3.1 The TMO is a company limited by guarantee registered under the provisions of the Companies Act 1985 as superseded by the Companies Act 2006. The TMO’s constitution is set out in Vol 2, Chapter 1, Annex A.
- 3.2 While this Agreement is in force the TMO will not amend its constitution without first getting the Council’s permission in writing. The Council will not withhold or delay giving its permission without good reason. At no

time may the TMO amend its constitution so that it no longer meets the conditions in regulation 4(1) of the Right to Manage Regulations.

4. STATEMENT OF EXERCISE OF MANAGEMENT FUNCTIONS UNDER THE RIGHT TO MANAGE

- 4.1 The Council agrees for the TMO to carry out those of its management functions as are specified in this Agreement, which is derived entirely from the Modular Management Agreement that has been approved by the Secretary of State under regulation 16(2) 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 TMO any ownership or other legal rights, or imposes any obligations in respect of the Property other than the right to manage and maintain the Property. Nothing in this Agreement affects the Council's legal relationship with its tenants or leaseholders and the Council retains its statutory, contractual and common law obligations to them and all other clauses in this Agreement are subject to this clause.

5. STARTING DATE

The TMO will exercise the functions it has agreed to exercise under this Agreement from the Starting Date of 1 December 2015 until the date on which this Agreement is ended in accordance with clause 20.

6. THE TMO'S EXERCISE OF MANAGEMENT FUNCTIONS

- 6.1 The TMO will carry out management functions for the Property in accordance with the terms of this Agreement.
- 6.2 In carrying out these functions the TMO will comply with the Council's legal obligations.
- 6.3 The TMO may, with the consent of the Council, appoint another person to carry out management functions.

- 6.4 The TMO agrees to exercise its functions in accordance with the performance standards set out in the Schedules and Appendices to this Agreement. The TMO also agrees that in exercising its functions it will have regard to the duties of the Council to meet the requirements of a best value authority under the provisions of Part I of the Local Government Act 1999 and orders made under that Part.
- 6.5 The Council agrees to inform the TMO of any action by the TMO which could have a serious detrimental effect on the HRA business plan. The TMO on being so informed agrees not to carry out any such action.
- 6.6 The TMO will comply with obligations imposed by law on the Council in so far as such obligations apply to the TMO, and obligations imposed by law on the TMO.

7. INSURANCE

- 7.1 The Council will insure the following risks should it consider appropriate:
- a) Damage to the structure of the property (buildings insurance) for fire, lightning, explosion and such other risks as the Council determines or as required by the terms of any appropriate lease on the property; and
 - b) Third party liability covering both the Council and the TMO against the risks arising from the functions to be carried out by the TMO in accordance with this Agreement.
- 7.2 Clause not included.
- 7.3 The TMO will arrange insurance with an insurer approved by the Council, to a level that the Council may reasonably require covering the following risks arising out the TMO's obligations under this Agreement:

- a) claims by third parties (public liability insurance) other than those claims specifically covered in accordance with clause 7.1b);
- b) claims by the TMO's Staff (employer's liability insurance);
- c) the dishonesty of the TMO's or the TMO's officers (fidelity guarantee insurance);
- d) the loss through fire or theft of property belonging to the Council in or on the Property which the TMO has custody of because of its duties and responsibilities under this Agreement;
- e) such other risks in respect of the TMO's responsibilities under this Agreement as the Council may from time to time reasonably require.

7.4 In addition to the requirements of clauses of Chapter 7, the TMO will:

- a) promptly, and no later than 31 days following a request, provide all information requested by the Council or its insurers;
- b) provide any other assistance deemed necessary by the Council or its insurers for the purposes of responding to, processing or paying an insurance claim or defending any litigation or Court proceedings against the TMO or the Council; and
- c) comply with all instructions, including to act or refrain from acting in any manner, issued by the Council or its insurers for the purposes of responding to, processing or paying an insurance claim or defending any litigation or Court proceedings against the TMO or the Council.

7.5 The Council shall hold and keep the TMO indemnified against any risk which the Council has agreed to insure.

8. EXCLUSION OF SECTION 27(13) OF THE HOUSING ACT 1985 AND GENERAL INDEMNITY

- 8.1 The parties shall hold each other, their employees and agents harmless against all liabilities, damages, costs, losses, claims, demands and proceedings suffered by a third party arising from any act, omission or failure to act in relation to the management functions to be carried out in accordance with this Agreement. This clause applies to any and all statutory duties, contractual rights and obligations as well as any negligent act or omission.
- 8.2 Neither Party shall be liable to the other for any direct, indirect or consequential economic or financial loss of any kind whatsoever whether caused by breach of any statutory duty, breach of contract (including but not limited to this Agreement) negligence, or arising in any other way. For the purpose of this clause indirect or consequential loss or damage means any loss not directly arising from the breach, negligence or other event.
- 8.3 Clauses 8.1 and 8.2 do not apply in the event of fraud or other criminal activity on the part of TMO, its employees or its agents.

9. CONFIDENTIALITY

- 9.1 The TMO will treat as strictly confidential all information in its possession in relation to tenants, leaseholders and freeholders of a dwelling. The TMO will use such information only for the purpose of fulfilling its obligations under this Agreement. The TMO will not give the information to or permit it to be seen by any other person or organisation except with the express advance written consent of the tenant, leaseholder or freeholder concerned, unless it is required to do so by law.
- 9.2 The Council will treat all information about tenants, leaseholders and freeholders of a dwelling as strictly confidential except where it is

necessary for the Council to use such information to fulfil its statutory obligations.

- 9.3 In fulfilling their respective obligations under this Agreement the Council and the TMO will register if necessary as data users and comply with the requirements of the Data Protection Act 1998.
- 9.4 The TMO agrees to publish a Code of Confidentiality.

10. EQUAL OPPORTUNITIES

- 10.1 The TMO will act in accordance with its Equal Opportunities Policy and Procedures set out in Schedule 2. The TMO will operate equal opportunities policies and procedures in exercising all of its functions under this Agreement. By implementing equal opportunities policies and procedures the TMO will ensure that it does not discriminate against any person or the protected characteristics groups referred to Equalities Act 2010 of race, ethnic origin, disability, nationality, gender, gender re-assignment, pregnancy and maternity, marital or civil partnership status, sexuality, age, class, appearance, religion or belief, responsibility for dependants, unrelated criminal convictions, being HIV positive or having AIDS, class or appearance or any other matter which causes any person to be treated with injustice.
- 10.2 The TMO will have regard to the any relevant Equality and Human Rights Commission code of practice and any other future guidance issued with EHRC or central government approval.
- 10.3 The TMO will publish to the following persons a statement of the TMO's Equal Opportunities Policy and Procedures:
- a) every member of the TMO;
 - b) any other person requesting a copy, upon payment of a reasonable charge.

10.4 The TMO will keep proper records of the implementation of its Equal Opportunities Policies and Procedures in all aspects of its work including:

- a) the letting of vacant dwellings and the admission of members;
- b) the employment of staff;
- c) board membership;
- d) racial, neighbourhood or other harassment and tenancy disputes;
- e) the appointment of and employment of contractors or consultants; and
- f) the delivery of services to the tenants and leaseholders of dwellings.

11. TRAINING

11.1 So that the TMO has the necessary skills and knowledge to fulfil its obligations under this Agreement the TMO will ensure that its members, Board members and staff have access to training opportunities, including training in:

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

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

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

12. INFORMATION TO TENANTS

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

13. CONFLICTS OF INTEREST

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

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

14. RIGHT TO REPRESENT

- 14.1 Where a tenant, leaseholder or freeholder requests the TMO to act as his or her representative in dealings with the Council, the Council will accept the TMO as such a representative.
- 14.2 Where the TMO requests the Council to recognise it to represent the collective interests of its members, the Council will comply with that request.

15. COUNCIL'S RIGHT OF ACCESS TO DWELLINGS

- 15.1 The Council will have the right of access to a dwelling to carry out the management functions it retains under this Agreement or in accordance with its legal obligations. The Council will give the TMO twenty four hours' notice (except in emergency where immediate access without notice is reasonably required).
- 15.2 Where the Council exercises its right of access to a dwelling under a tenancy or leasehold agreement, it will give notice to the TMO at the same time as it gives notice to the tenant or leaseholder.
- 15.3 In exercising a right of access the Council will cause as little disturbance, nuisance or annoyance as possible to residents in a dwelling and will make good to the TMO's reasonable satisfaction any damage caused in exercising the right.
- 15.4 Nothing in this clause gives the Council the right to enter any tenanted part of a dwelling unless this is permitted under the relevant tenancy agreement.

16. INTERPRETATION OF THIS AGREEMENT AND GENERAL PROVISIONS

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

in this Agreement the same as in the Modular Management Agreement.

- 16.2 All of the Schedules in this Agreement are agreed between the Council and the TMO and, except where a Schedule is constituted by a list of property items or services or it is otherwise stated, are in accordance with guidance given by the Secretary of State under regulation 7 of the Right to Manage Regulations and contained in the Guidance on the Schedules. Each Schedule will contain an issue number and date indicating the date issued or last amended.
- 16.3 Clause not included.
- 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 TMO will consider a resolution stating that it wishes to continue managing the Property under the terms of this Agreement. Should such a resolution be rejected by a simple majority vote at the Annual General Meeting, the TMO will hold a 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 2020 and at least every five years thereafter the TMO will consult with all the tenants and leaseholders of dwellings, through either a secret ballot or an anonymous questionnaire, whether this Agreement should continue. The purpose of the consultation will be to ascertain:

- a) opinion as to the effectiveness of the TMO as manager of the Property; and
- b) whether:
 - i) the majority of those responding; and
 - ii) the majority of Tenants responding,

wish the TMO to continue as manager of the Property under this Agreement.

17.3 If the majority of those responding to the consultation and a majority of Tenants responding do not wish the TMO to continue as manager of the Property, the TMO will have the right to hold a secret ballot within three months of the date on which the outcome of the consultation is announced.

17.4 The TMO will inform the Council of the result of any consultation exercise under clause 17.2 above within 21 days of the date of the ballot or, as the case may be, within 21 days of the closing date for returning the questionnaire. If a ballot is held under clause 17.3 and the majority of those voting and a majority of Tenants voting still do not wish the TMO to continue as manager of the Property the TMO will give notice to end the Agreement under clause 20.2.4.

18. VARIATIONS TO THIS AGREEMENT

18.1 This Agreement may be varied in the following ways:

- a) by the TMO:
 - i) obtaining certification by an Approved Assessor that, in relation to additional management functions that the TMO wishes to exercise which are included as options in the Modular Management Agreement, the TMO has the required level of competence; and
 - ii) then giving the Council at least six months written notice, or such other period as may be agreed, that it has decided by a simple majority vote at a board meeting to take on those management functions, in which case this Agreement will be varied by adopting the appropriate clauses of the Modular Management Agreement.
- b) by the TMO, giving the Council at least 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 TMO agreeing to replace or amend a Schedule to this Agreement, provided that the new or amended Schedule satisfies the requirements that were satisfied by the Schedule being replaced or amended;
- d) by the Council and the TMO agreeing to vary the Agreement by selecting different options from the Modular Management Agreement;
- e) by the Council and the TMO agreeing, under clause 10.2 of Chapter 2, that the Council will take over the Estate Services that have been provided by the TMO;
- f) where the Secretary of State modifies the Modular Management Agreement:
 - i) where the modifications are required in consequence of a change in primary or subordinate legislation, by the TMO or the Council giving notice to the other party requesting that the clauses in this Agreement requiring to be modified be replaced by the modified clauses;
 - ii) where the modifications do not fall within paragraph (i), by the TMO and the Council agreeing to replace the clauses in this Agreement corresponding to the modified clauses with those clauses.

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

- g) by the Council terminating the operation of clause 3 of Chapter 6.

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

18.2 Variations to the Agreement in accordance with clauses 18.1 a), b), d), e) and f) will be effected by a Deed of Variation signed and sealed by the Council and the TMO. The variations will come into effect at the date specified in the Deed of Variation. The Deed of Variation will state the adjustment to the Allowances, if any, arising from the variation made.

18.3 The Council and the TMO agree that the effect of:

- a) a tenant of a dwelling exercising the Right to Buy his or her home under the provisions of Part 5 of the Housing Act 1985;
- b) a leaseholder exercising the Right to Enfranchise under the Leasehold Reform, Housing and Urban Development Act 1993;
- c) any cessation or reduction in funding from central government to the Council in respect of the TMO'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 9(4)(b) of the Right to Manage Regulations, which permits a further proposal notice under the Right to Manage to be served by tenants in TMOs which manage more than 2,500 homes to form their own smaller TMO;
- e) any notice of cessation by the TMO in exercising a management function on behalf of the Council as listed in Chapter 1 Schedule 1(A), or under Chapter 3 Schedule 3, and Chapter 6 clause 22; and
- f) any notice of cessation by the Council in the appointment of the TMO to exercise a management function on behalf of the

Council under Chapter 1 Schedule 1(A), or under Chapter 3
Schedule 3 and Chapter 6 clause 22;

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 TMO.
- 19.2 Subject to the provisions of clause 19.9, in the event of the TMO failing to exercise a management function or a management task to the performance standards referred to in clause 1 of Chapter 8, or where there has been a financial breach by the TMO, or the Council is satisfied that there are serious failings of the TMO as described in clause 6.7 of Chapter 8, the Council will work with the TMO to develop, agree and implement an Improvement Plan (Vol 2, Chapter 1, Schedule 3A) to improve the performance in order to reach those standards or prevent serious financial breaches.
- 19.3 In order to assist with the development of an Improvement Plan with which the TMO is in agreement, the Council may, in the first instance, appoint an independent person to advise on the performance standards of the TMO, the action proposed by the Council, and the views of the TMO, and to recommend to the Council and the TMO the

steps that should be taken, to be included in the Improvement Plan, to deal with the problems that have arisen. The consent of the TMO is required that the person proposed by the Council for these purposes may so act, but such consent is not to be unreasonably withheld.

19.4 In the event of the TMO failing to implement the Improvement Plan (including such failure following the appointment of an independent person in accordance with clause 19.3 and any recommendations made by him), the Council may serve a Supervision Notice in respect of all of the TMO's management functions or those of its management functions that are specified in the Supervision Notice. The provisions of Schedule 3 (Supervision Notice Policy and Procedure) shall apply to Supervision Notices and the action that can be taken after a Supervision Notice has been served.

19.5 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.

19.6 Where the Council proposes to serve a Supervision Notice on the TMO, in a case where a Special Review has not taken place, the TMO may require the Council to appoint an independent person to advise on the reasonableness of the Council's action in all of the circumstances of the case and make recommendations on the content of the proposed Supervision Notice. The Council will appoint an independent person when required to do so by the TMO, and will accept any recommendations made by him unless it is satisfied that there are exceptional circumstances which make it inappropriate for it to do so.

The provisions of Schedule 3 will apply to the appointment of the independent person and the procedures to be followed by him. The consent of the TMO is required that the person proposed by the Council for these purposes may so act, but such consent is not to be unreasonably withheld.

- 19.7 Where the relevant conditions set out in the Supervision Notice are satisfied, the Council will restore to the TMO the exercise of those functions specified in the Supervision Notice in respect of which the relevant conditions are satisfied, by serving a Supervision Termination Notice on the TMO, which will specify the date from which the exercise of those functions will be restored
- 19.8 Where the relevant conditions set out in the Supervision Notices are not satisfied the Council may serve a Breach Notice on the TMO. Within 21 days of receipt of a Breach Notice the TMO will remedy the breach or notify the Council in writing why it cannot remedy the breach within this period, and specify the date by which the breach will be remedied.
- 19.9 If the breach is not remedied within 21 days of receipt of a Breach Notice, or the Council does not accept the adequacy of the reasons given by the TMO why it cannot remedy the breach within this period, or does not accept the date specified by the TMO as the date by which the breach will be remedied, the Council may serve a Warning Notice, warning the TMO that unless the breach is remedied within seven days the functions specified will be removed from the functions being exercised by the TMO.
- 19.10 If the TMO has not corrected the breach within seven days of receiving the Warning Notice, the Council may in writing terminate the TMO's exercise of the functions specified in the Breach Notice and Warning Notice from a specified date. The TMO will have to wait 24 months (or such shorter period as the Council may decide) before it can resume exercising the functions by virtue of the application of clause 18.1.a).

19.11 Without affecting any other rights the TMO may have under this Agreement or at law:

19.11.1 if the Council does not fulfil any of its obligations in respect of management functions not being exercised by the TMO under this Agreement or its obligations under this Agreement, the TMO may serve a Failure Notice on the Council; and

19.11.2 within 21 days of receipt of a Failure Notice the Council will remedy the failure or notify the TMO in writing why the Council cannot remedy the failure within this period and specify the date by which the failure will be remedied.

19.12 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 which reflects the reduction in the number of management functions exercised by the TMO.

20. ENDING THIS AGREEMENT

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

20.2 This Agreement will end:

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

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

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

- 20.2.3 if the TMO has passed a resolution to end this Agreement at a duly convened General Meeting and gives the Council at least three months' written notice of the date on which the Agreement will end;
 - 20.2.4 if the TMO, having failed to secure a mandate to continue as manager of the Property under clause 17, gives the Council three months' written notice to end this Agreement;
 - 20.2.5 on the expiry of three months' written notice given to the TMO by the Council if the TMO has received a Supervision Notice from the Council under the provisions of clause 19.5, and either:
 - i) the TMO has failed to remedy the breach or initiate the necessary action to remedy the breach to the reasonable satisfaction of the Council, or
 - ii) the TMO has not taken the necessary steps to transfer the relevant functions to the Council under clause 18.1b).
 - 20.2.6 if the Council sells or transfers its ownership or interest in the Property; or
 - 20.2.7 on the date a Right to Enfranchise purchase is completed, if the TMO has given the Council at least one month's written notice that the reduction in the number of dwellings or the change in its obligations is such that the TMO wishes to end the Agreement.
- 20.3 Prior to the sale or transfer of its ownership or interest in the Property and consequent ending of this Agreement under clause 20.2.7, the Council undertakes to use its best endeavours to ensure that the successor landlord enters into a similar agreement with the TMO.

- 20.4 Any notice to end this Agreement will expire on the last day of a month unless given under clause 20.2.3.
- 20.5 If this Agreement ends the Council will within one month of the date on which the Agreement ends give written notice to the Secretary of State.
- 20.6 The ending of this Agreement will not affect any rights or liabilities of the TMO or the Council that have arisen under this Agreement before the date on which it ends including, in particular, the following rights or liabilities:
- a) Chapter 1, clause 8: the general indemnities;
 - b) Chapter 3, clause 9: the payment of rent due;
 - c) Chapter 4, clause 9: the payment of service charges and ground rent collected;
 - d) Chapter 5, clause 8: the payment of the balance of funds; and
 - e) Chapter 7, clause 1: the indemnity in respect of staff.
- 20.7 If this Agreement ends the TMO will within three months of the end of this Agreement produce an account and balance sheet as at the date on which this Agreement ends.
- 20.8 If this Agreement ends any monies paid to the TMO to carry out its management functions under this Agreement that remain in the TMO accounts (except the TMO reserves) once creditors have been paid will be returned to the Council within 3 months.
- 20.9 If this Agreement ends the TMO will as soon as is reasonably practicable hand over to the Council such information and records as the Council may reasonably require for the future management of the Property.
- 20.10 If this Agreement ends the TMO will as soon as is reasonably practicable hand over to the Council any property whether or not it is

listed under Schedule 1 which is owned by the Council, and at the TMO's option, transfer to the Council with or without charge all rights of title and interest in and to any other equipment, plant, materials and consumables owned by TMO, used to operate in accordance with this Agreement.

- 20.11 If this Agreement ends, the TMO 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 TMO IN RESPECT OF RESPONSIVE AND PLANNED MAINTENANCE REPAIRS

- 1.1 The TMO 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 TMO in respect of Repairs), being classes of repair that it is practicable for the TMO to carry out, subject to the provisions of clauses 8 and 9.
- 1.2 Nothing in this clause will impose upon the TMO an obligation to repair, redecorate or maintain:
 - 1.2.1 any fixture, fitting or appliance provided by a tenant, leaseholder or freeholder as an alteration or improvement except where the Council would be under an obligation to repair, redecorate or maintain it;
 - 1.2.2 any part of a Property dwelling or any fixture, fitting or appliance in a Property dwelling which is in need of repair or maintenance because of any defect in the design or construction of the Property dwelling or the manufacture of any fitting, appliance or component part or
 - 1.2.3 any part of a Property dwelling or any fixture, fitting or appliance which a tenant, leaseholder or freeholder is under an obligation to maintain under his or her tenancy, lease or freehold transfer.
- 1.3 The TMO agrees to make good any damage and to carry out repairs to any dwelling (including redecoration) which may be needed as a result of the TMO carrying out the Responsive and Planned Maintenance Repairs it has agreed to carry out under this clause.

1.4 Clause not included.

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 TMO 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 TMO is not carrying out a repair that it has agreed to carry out or is not meeting the standards and time scales set out in Schedule 1, the Council may inform the TMO in writing of the repair required in a Repair Notice.

3.5 If a Repair Notice is served under clause 3.4, 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 TMO

4.1 The TMO 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 TMO 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 TMO 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 TMO will cooperate with the Council in respect of any Major Works proposed by the TMO 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 TMO 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 TMO 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 TMO will take into account any comments tenants, leaseholders or freeholders may make.
- 4.6 The TMO will have regard to any reasonable changes which the Council may suggest to the TMOs Major Works proposals.

5. REQUESTS FOR MAJOR WORKS BY THE COUNCIL

- 5.1 Clause not included.

6. MAJOR WORKS

- 6.1 The TMO agrees to enter into contracts for agreed Major Works (see Schedule 2) and supervise such works if the Council has included sufficient budget for the TMO to carry out such works.
- 6.2 Clause not included.
- 6.3 Clause not included.
- 6.4 Clause not included.
- 6.5 The TMO 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 TMO 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.

7. PARTNERING CONTRACTS

- 7.1 Clause not included.

8. REPLACEMENT REPAIRS

- 8.1 Clause not included.

9. REPAIRS COVERED BY THE COUNCIL'S BUILDINGS INSURANCE

- 9.1 Clause not included.
- 9.2 Clause not included.

- 9.3 If the TMO considers that a repair that falls within the list of repairs in Schedule 1 is an Insurance Repair, the TMO will immediately notify the Council in writing of that fact.
- 9.4 If the Council receives a notice from the TMO under clause 9.3 above or is otherwise aware that an Insurance Repair is needed, the Council will:
- a) authorise the TMO 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) the Council will authorise the TMO to carry out the repair.
- 9.6 The TMO will, as soon as is reasonably practicable after receiving a request from the Council, provide the Council with any information which the Council may reasonably require in order to make or pursue a claim to its insurers for the cost of an Insurance Repair.

10. PROVISION OF ESTATE SERVICES

- 10.1 The TMO agrees to provide the TMO's Estate Services listed in Schedule 6 (Functions and Performance Standards of the TMO and the Council in respect of Estate Services) and to comply with the performance standards set out in that Schedule 6.
- 10.2 The TMO will inform the Council in writing if the TMO is unable to provide any of the TMO's Estate Services for seven days or more. The notice will inform the Council of the service the TMO is unable to

provide, the period of time for which the service will be unavailable and the reason why the TMO is unable to provide the service. The Council will provide the services the TMO is unable to provide and deduct this from the TMO allowances accordingly.

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

- 10.3 The Council will provide all Estate Services not provided by the TMO in accordance with clause 10.1 and comply with the performance standards set out in that Schedule 6.

11. TECHNICAL ADVICE

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

12. RIGHT TO IMPROVE AND LEASEHOLDER IMPROVEMENTS

- 12.1 The TMO and Council agree to follow the Improvements Policy and Procedure set out in Schedule 7 if the Council or the TMO has been served with an Improvement Notice, requesting consent to make improvements served by either a tenant (who has the right to improve his or her dwelling under section 97 of the Housing Act 1985) or a leaseholder (who has the right to improve under the terms of the lease).
- 12.2 If the Council or, as the case may be, the TMO consider that consent for the improvement proposed in an Improvement Notice should be refused or granted subject to conditions, the Council or, as the case may be, the TMO will inform all parties in writing of the reasons for that

decision in accordance with the time limits set out in the relevant legislation or, where no time limit is set, as soon as is reasonably practicable.

13. RIGHT TO REPAIR

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

CHAPTER 3

Rent (including Tenant Service Charges)

1. CONFIDENTIALITY AND PROCEDURES

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

2. RENT COLLECTION FROM TENANTS

- 2.1 The TMO 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 TMO 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 TMO 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 TMO 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 TMO to take legal proceedings under this clause where Rent arrears have arisen if the TMO is unable to recover arrears in accordance with the provisions of Schedule 1. In taking such action the TMO will act in accordance with the provisions of that Schedule. The TMO will notify the Council in writing within seven days of its intention to :

- a) serve a Notice Seeking Possession or a Notice to Quit, or notice of any other intended court proceedings;
- b) begin court proceedings; or
- c) obtain a court order, and the terms of such an order.
- d) the Council will reply within seven working days of the receipt of the notice if the Council decide that it does not want any of the powers above exercised or if such powers should be exercised subject to conditions.

3.3 The TMO is authorised to enforce a court order without the written consent of the Council.

- 3.4 If the TMO enforces a court order for possession of any dwelling the TMO 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 Clause not included.

5. FORMER TENANTS' ARREARS

- 5.1 The TMO will manage the collection of debts of all former tenants.
- 5.2 Clause not included.
- 5.3 The TMO 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 TMO can write off a former tenant's arrears that the TMO 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 TMO with an accurate statement of housing benefit payments payable to tenants. On receipt of the statement the TMO will credit housing benefit payments to the relevant tenant's Rent account within the period provided for in Schedule 1.
- 6.2 The TMO 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 TMO out of the TMO's Surplus Fund, (see clause 10 of Chapter 5); or
 - b) any other benefits which have or may come from the management of the Property dwellings by the TMO.
- 7.3 Where the TMO, after consultation with tenants, decides that additional services should be provided, or that additional services being provided should no longer be provided, the TMO may request the Council to make appropriate adjustments in the Rent and the Council will give reasonable consideration to all such requests. The Council will make appropriate adjustments in accordance with the provisions of Schedule 2 (Tenant Service Charge Procedure). If the TMO decides to add the provision of additional Estate Services to its management functions (clause 10 of Chapter 2), the cost for providing the services will be included in the tenant service charge in the Rents and included in the Allowances (Chapter 5, clause 1).
- 7.4 The Council will notify the TMO in writing of the Total Rent which the Council requires from the Property Dwellings for each rental period.
- 7.5 The Council will set the Total Rent by:
- a) calculating the rent in accordance with the Rent Restructuring Regime and conditions (see clause 7.1); and

- b) including the tenant service charge required by the TMO for additional services under clause 7.3.

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

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

8. NOTIFICATION OF RENT CHANGES

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

8.2 The TMO 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 Clause not included.

10. VOIDS ALLOWANCES

10.1 Clause not included.

11. BAD DEBTS / WRITE OFFS

11.1 The Council and the TMO 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 Clause not included.

CHAPTER 4

Leaseholder and Freeholder Service Charges

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

1. CONFIDENTIALITY AND PROCEDURES

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

2. INFORMATION

- 2.1 The TMO agrees to keep accurate information on the Service Charges for those services it provides to leasehold and freehold dwellings. The service charges will be calculated on an estimated and an actual basis in accordance with the terms of the leases or freehold transfers.
- 2.2 Where the TMO and the Council have agreed under clause 3, Option B, that the TMO calculate Service Charges, send out Service Charge

demands and collect Service Charges, the TMO will treat the obligations of the Council under 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 TMO 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 on behalf of the Council.

3.2 The Council will maintain its records and accounts books in such a way as will enable the TMO 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 TMO will each ensure that all invoices and credit notes relating to the services provided by it have proper records and audit trails and comply with the provisions of the Schedule.

3.4 The TMO 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 TMO will send Ground Rent demands and collect Ground Rents.

5. SERVICE CHARGE AND GROUND RENT ARREARS

- 5.1 The TMO will manage all Service Charge and Ground Rent arrears, and is authorised to take recovery action in respect of all service charges and ground rents in accordance with the provisions of the Schedule. However written consent of the Council will be required prior to the issue of forfeiture proceedings.
- 5.2 The TMO agrees to inform the Council of any action it intends to take to remedy any breach of lease or covenant in respect of service charge arrears.

6. CONSULTATION PROVISIONS UNDER THE LANDLORD AND TENANT ACT 1985 RELATING TO SERVICE CHARGES

- 6.1 For the avoidance of doubt, the TMO 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 TMO of any of its obligations in Chapter 2. In particular, and without prejudice to the generality of this delegation, the TMO 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 TMO 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 TMO will, in relation to consultation with tenants and leaseholders, treat the consultation requirements of sections 20 and 20ZA of the Landlord and Tenant Act 1985 and of regulations made under those sections as requirements directed at it.

8. OTHER PROVISIONS OF THE LANDLORD AND TENANT ACT 1985 RELATING TO SERVICE CHARGES

- 8.1 The TMO 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 TMO that is required by the TMO 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 Clause not included.

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

- 10.1 Clause not included.

CHAPTER 5

Financial Management

1. CALCULATION OF ALLOWANCES

- a) The Allowances to be paid by the Council to the TMO (whether directly or indirectly) under clause 2 shall be deemed to include all costs of providing management services described in this Agreement.
- 1.2 The Council will give the TMO at least three months' notice of the proposed change in the amount falling within paragraph (a) of clause 1 for the following financial year. Any change in the Allowances will come into effect from the beginning of the following Financial Year and will be implemented over such period as may be agreed by the TMO in accordance with the provisions of Schedule 1.
- 1.3 At least two months before the beginning of each Financial Year the TMO will in writing inform the Council of the Allowance it calculates it requires for the coming Financial Year. The TMO will state the reasons for any increase or decrease in the amount it calculates it requires compared with the corresponding amount for the previous Financial Year.
- 1.4 Either party may seek a review of the Allowances being paid in accordance with clause 1.a and the provisions of Schedule 1 and such a review will be conducted in accordance with the provisions of Schedule 1. Any change in Allowances following such a review will come into effect from the beginning of the following Financial Year and will be implemented over such a period as may be agreed by the TMO and the Council in accordance with the provisions of Schedule 1.

2. PAYMENT OF ALLOWANCES

- 2.1 The Council will pay the TMO 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 1.
- 2.2 Where this Agreement ends in the course of a Financial Year, the Allowances payable in respect of the period from the start of that Financial Year to the date this Agreement ends shall be the Allowances payable in respect of that Financial Year multiplied by $x/365$ (or, in the case of a leap year, $x/366$), where x is the number of days from the start of that Financial Year to the last day this Agreement is in force.
- 2.3 Value Added Tax at the standard rate shall be charged to the Council on the Allowances payable to the TMO under this Agreement.

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

- 3.1 The TMO is authorised to incur management and administrative expenses in the exercise of its Management Functions under this Agreement. The TMO will act in accordance with the provisions of Schedule 1 for all payments of such costs and expenses.

4. THE TMO'S BANKING ARRANGEMENTS

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

4.4 Clause not included.

5. FINANCIAL CONTROL AND ACCOUNTING STANDARDS

5.1 The TMO will conduct its financial affairs in accordance with the provisions set out in Schedule 3.

5.2 The TMO will account for HRA income and expenditure in accordance with the accounting standards set out in Schedule 3 (Accounts and Audit).

5.3 The TMO will provide the Council with the following financial information with regard to the HRA budgets:

- 1) the TMO'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 TMO'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 TMO's accounts and balance sheet for the previous Financial Year audited by a qualified auditor within six months of the end of each Financial Year;
- 4) the TMO'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 TMO's correspondence, files, books and records of accounts that relate to the management of the Property dwellings and the TMO's

financial procedures manuals will be available to inspection for audit purposes by the Council's internal audit staff, the Council's external auditor, and the Audit Commission. Reasonable notice that such inspection is desired is to be given by the party desiring it.

6. FINANCIAL YEAR

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

7. RESTRICTION ON INVESTMENTS

- 7.1 Clause not included.

8. RESERVE FUNDS

- 8.1 Clause not included.

9. MAJOR WORKS ACCOUNT

- 9.1 Clause not included.

10. FINANCIAL REPORT AND SURPLUS FUND

- 10.1 The TMO will produce audited Annual Accounts for the past Financial Year.
- 10.2 If the Annual Accounts show a surplus of assets over liabilities, the balance will be transferred to the Surplus Fund, and the TMO will report on the Surplus Fund at its Annual General Meeting. The Surplus Fund will be shown on the TMO's balance sheet.
- 10.3 The Surplus Fund may be used by the TMO for any purpose permitted by the TMO's constitution and shall be used for producing audited accounts under clause 10.5.
- 10.4 Any balance in the Surplus Fund will be carried forward from one year to the next.

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

11. LOANS TO THE TMO

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

12. INTEREST ON LATE PAYMENTS

- 12.1 The TMO agrees to pay interest on any late payment due to the Council under this Agreement. Interest will be paid at the base lending

rate of the Nominated Bank from the date on which the payment was due to the date on which the Council receives the payment.

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

13. SET OFF OF PAYMENTS

- 13.1 If any payment under this Agreement due from the TMO to the Council is late or withheld by more than one month the Council may, subject to clause 13.4, deduct the outstanding amount (together with interest due under clause 12) from any money owed to the TMO.
- 13.2 If any payment under this Agreement due from the Council to the TMO is late or withheld by more than one month the TMO may, subject to clause 13.4, deduct the outstanding amount (together with interest due under clause 12) from any money owed to the Council.
- 13.3 Interest on any payment under clause 12 will stop on the date that the right of set off is used.
- 13.4 No deduction under clause 13.1 or 13.2 shall be made unless at least two weeks' written notice by the party proposing to make the deduction to the other party is given.

14. REGISTRATION FOR VAT

- 14.1 The TMO will comply with the legal requirements to register with HM Customs and Excise for Value Added Tax.

15. TMO CONTRACTS

The TMO 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 TMOs in its literature.
- 1.2 The TMO will provide the Council with an information leaflet about what it is and what it does.
- 1.3 The Council will give housing applicants the opportunity to state if they would like to be housed in a Property dwelling.

2. CONSULTATION BETWEEN THE TMO AND THE COUNCIL

- 2.1 The Council will consult with the TMO before adopting or altering its allocation scheme under section 167 of the Housing Act 1996.
- 2.2 The TMO may at any time make suggestions to the Council about alterations to the Council's allocation scheme under section 167 of the Housing Act 1996, and may, in particular, put forward detailed proposals in relation to a Local Lettings Policy being operated by the Council as part of its allocations scheme.
- 2.3 The Council undertakes to give serious consideration to all suggestions and proposals made by the TMO under clause 2.2.
- 2.4 The TMO will consult with the Council in respect of any application falling under clauses 12 to 18 that requires the resolution of complex issues of law or fact.
- 2.5 The TMO may, if the Council so requests, monitor the operation of a Local Lettings Policy as it relates to the Property dwellings, and where the TMO does carry out such monitoring, it will keep the Council informed of its findings.

- 2.6 The TMO will assist the Council in the development of the Council's Anti-Social Behaviour Policies and Procedures and will operate the procedures, with particular reference to the sharing of information, the handling and monitoring of complaints, and dealing appropriately with anti-social conduct.
- 2.7 The Council will assist the TMO to liaise with the Crime and Disorder Reduction Partnership, to ensure that the manner in which the TMO performs its functions under this Agreement links in with the Partnership and the strategy for addressing crime and disorder under section 6 of the Crime and Disorder Act 1998.

3. SELECTION OF TENANTS OF VACANT PROPERTY DWELLINGS

- 3.1 Where the Council is satisfied that more than one person meets the criteria for selection as a tenant of a vacant Property dwelling, the Council will ensure that a shortlist of applicants in priority order drawn from the Council's Housing Register is provided to the TMO and will request the TMO to select the highest priority applicant wanting the tenancy of the specified property subject to the Council's Allocations Scheme, to the related policies and processes, and to the property being suitable. .
- 3.2 The Council will either advertise vacant properties and select a tenant or select an applicant for a direct offer for a property in accordance with its own Allocations Scheme, procedures and timetable.
- 3.3 Where a person has been selected as a tenant of a vacant Property dwelling, the TMO is authorised to carry out all the necessary administrative procedures prior to the grant of the tenancy.
- 3.4 The tenancy granted by the Council will be in the form of a Tenancy Agreements set out in Annex A to this Chapter.
- 3.5 The Council may, where it is satisfied that a person has exceptionally urgent housing needs, require the TMO to make available a specific

Property dwelling to that person, providing the TMO with its detailed reasons for such a decision.

- 3.6 Where a case falls within clause 3.5 the Council will carry out all relevant and necessary administrative procedures prior to the grant of the tenancy.
- 3.7 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 agreed procedures.

4. TRANSFERS

- 4.1 Where a tenant of a Property dwelling applies for a transfer to another property, all such applications must be assessed by the Council in compliance with the Council's Allocation Policy. The Council will carry out all the administrative tasks and conduct all the investigations that are required before a transfer application can be approved, and will provide all reasonable assistance to the tenant. Any allocations of property to a transfer applicant must also comply with the Council's Allocation Policy.

5. INTRODUCTORY TENANCIES

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

6. VARIATIONS TO THE TENANCY AGREEMENTS

- 6.1 The Council or the TMO 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 TMO the Council will within 28 days of receipt of the notice:
- (a) consent in writing to the changes proposed by the TMO;
 - (b) amend the TMO's proposed changes, giving written reasons for the amendments, and consent in writing to the amended changes; or
 - (c) inform the TMO in writing of the Council's rejection of the changes proposed and the reasons for the rejection.
- 6.4 If the Council serves a Tenancy Variation Notice on the TMO, the TMO may within 28 days submit its views in writing to the Council on the change(s) proposed. The Council will give a reasoned written response to the TMO's views before serving the preliminary notice of variation of tenancy on secure tenants.
- 6.5 If the Council proposes changes, it will carry out the tenant consultation and service of notices in accordance with the provisions of section 103 of the Housing Act 1985 and the provisions set out in Schedule 4 (Tenancy Agreement Changes Procedure).
- 6.6 If the TMO proposes changes and the Council has consented to those changes, the TMO will carry out the tenant consultation and service of notices in accordance with the provisions of section 103 of the Housing Act 1985 and the provisions set out in Schedule 4.
- 6.7 If, where the TMO has proposed changes, the majority of secure tenants do not wish for the TMO to represent them during the consultation process under section 103 of the Housing Act 1985, the

secure tenants may choose another body to represent them during that consultation process.

- 6.8 The new Tenancy Agreement with the date that it comes into effect will then be substituted for the former Tenancy Agreement at Annex A.

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

- 7.1 In carrying out its management functions under this Agreement, the TMO will adopt recommended good practice, having regard to the guidance published by the Chartered Institute of Housing.

- 7.2 If the TMO considers that on a ground other than Rent or Service Charge arrears:

- (a) a tenant is in breach of the tenancy;
- (b) a leaseholder is in breach of the lease; or
- (c) a freeholder is in breach of a covenant in the freehold transfer,

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

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

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

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

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

8. ENDING AND RENEWING FLEXIBLE TENANCIES

- 8.1 The Council determines whether flexible tenancies should or should not be renewed at the end of the fixed term in line with its Tenancy Policy, following discussion with the TMO about how the policy should be applied in the case under consideration.
- 8.2 The Council informs the TMO where it intend, following discussion, not to renew a flexible tenancy within one week of providing this information to the tenant affected in line with its duty under Section 107D(3) of the Housing Act 1985.

9. ANTI-SOCIAL BEHAVIOUR AND HARASSMENT

- 9.1 The TMO will investigate and take action to deal with complaints of anti-social behaviour and harassment, including in particular harassment on grounds of the EHRC Protected Characteristics, which affect any resident of a Property dwelling, in accordance with the provisions set out in Schedule 6.

10. RESIDENTS' DISPUTES

- 10.1 Clause not included.

11. UNLAWFUL OCCUPATION

- 11.1 The Council will inform the TMO 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.
- 11.2 If the TMO:

- (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 TMO will:

- i) carry out an investigation to determine whether or not the dwelling is unlawfully occupied; and
- ii) within 28 days inform the Council of the results of its investigation and any action the TMO intends to take.

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

12. VOID DWELLINGS

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

12.2 The TMO will take such actions as may reasonably be necessary to secure a vacant dwelling against unlawful occupation and to protect it from damage and deterioration.

12.3 If repairs are needed to any vacant dwelling to make the dwelling fit for re-letting or for any other purpose, each of the repairs required will be carried out by the TMO or, as the case may be, by the Council, in accordance with whichever party has the obligation to carry out the repair in question under Chapter 2 of this Agreement.

13. RIGHT TO EXCHANGE

13.1 The TMO is authorised to receive Application to Exchange notices from secure tenants and tenants holding flexible tenancies who have the

Right to Exchange under section 92 of the Housing Act 1985 and section 158 of the Localism Act 2011, and to administer exchanges, in accordance with the provisions of Schedule 8.

14. RIGHT TO ASSIGN TO RESTRICTED CATEGORY OF PERSONS

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

15. APPLICATIONS TO SUBLET

- 15.1 Clause not included.

16. RIGHT OF SUCCESSION

- 16.1 The TMO will administer any Claim to the Right of Succession of a person claiming that he or she is qualified to succeed to the tenancy of a Property dwelling under sections 87 to 90 of the Housing Act 1985, updated by section 160 of the Localism Act 2011. The TMO will in administering such claims act in accordance with the Council's policy which is set out at Annex B and is available free of charge from the TMO.
- 16.2 The TMO will within 14 days of receiving a Claim to the Right of Succession inform the Council in writing that the claim has been made.
- 16.3 The TMO will within 28 days of receiving a Claim to the Right of Succession send the Council a Right of Succession Notice stating whether or not the TMO intends to accept the claim. The TMO will not accept any claim earlier than the seventh day after the date on which it sent the Right of Succession Notice to the Council.

16.4 If the Council considers that the TMO has not correctly applied the Right of Succession Policy the Council may, within seven days of the date on which it received the Right of Succession Notice:

- (a) in a case where the TMO has accepted the Right of Succession, request the TMO in writing to refuse the Claim to the Right of Succession giving reasons why the Council considers that the claim should be refused; or
- (b) in a case where the TMO has refused the Right of Succession, request the TMO in writing to accept the Claim to the Right of Succession giving reasons why the Council considers that the claim should be accepted.

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

17. GIVING CONSENTS

17.1 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).

17.2 The TMO will consider applications for consent from tenants or leaseholders of Property dwellings and give or, as the case may be, refuse consent in respect of the matters listed in paragraph 1 of Schedule 11.

17.3 Where consent is required in respect of a matter that is not listed in Schedule 11, the TMO and the Council will agree as to which of them should consider the application, and Schedule 11 will be amended accordingly in accordance with the provisions of clause 18.1 c) of Chapter 1.

17.4 Where the TMO and the Council are unable to reach agreement under clause 17.3, the provisions of clause 18 of Chapter 7 will be applied.

18. RIGHT TO BUY AND SALES

18.1 The Council will consult the TMO about the general terms and conditions of sale of Property dwellings. The Council will:

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

18.2 If a tenant of a Property dwelling serves notice claiming to exercise the Right to Buy on the TMO, the TMO 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 TMO informed of the progress of the claim at each major stage.

18.3 The TMO is authorised to receive notices from tenants of Property dwellings claiming to exercise the Right to Buy.

18.4 The TMO will:

- (a) give a 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.
- 18.5 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 TMO of the notice referred to in clause 18.4 c).
- 18.6 The Council will within 14 days notify the TMO in writing of any of the following:
- (a) the receipt of a notice from a tenant under section 122 of the Housing Act 1985 claiming to exercise the Right to Buy;
 - (b) the service of a notice by the Council under section 124 of the Housing Act 1985 admitting or denying the Right to Buy;
 - (c) the service of a notice by the Council under section 125 of the Housing Act 1985 notifying the tenant of the purchase price to be paid in exercising the Right to Buy and of other matters;
 - (d) the service of a notice by the Council under section 140 or 141 of the Housing Act 1985 requiring the tenant to complete;
 - (e) the receipt of any notice from a tenant served under section 144 of the Housing Act 1985 claiming to exercise the right to acquire on rent to mortgage terms;
 - (f) the receipt of a notice from a tenant under section 153A of the Housing Act 1985 of an initial notice of delay, or the service of a counter-notice by the Council under that section; and
 - (g) the receipt of a notice from a tenant under section 122 of the Housing Act 1985 withdrawing a claim to exercise the Right to Buy.

- 18.7 The TMO 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.
- 18.8 The TMO will inform the Council within 7 days of commencing possession proceedings that it has done so.
- 18.9 The TMO 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 18.2.
- 18.10 The Council will give the TMO 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 TMO will immediately notify the Council in writing of any arrears of Rent.
- 18.11 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 18.10.
- 18.12 Where the Council fails to follow the procedure or fails to consult the TMO as set out in this clause the Council will be liable for any rent arrears that arise.

19. RIGHT TO BUY: ENQUIRIES BEFORE EXCHANGE OF CONTRACTS

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

20. USE OF THE PROPERTY

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

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

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

21. RECOGNITION OF RESIDENTS' ASSOCIATIONS

21.1 The TMO 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 TMO 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 TMO within a further 14 days, and before reaching any decision.

- 21.3 When the TMO 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 TMO 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 recognised tenants' association it shall inform the TMO of these concerns in writing and, should the Council reasonably require, the TMO shall be required to give notice in writing to the recognised tenants' association withdrawing recognition in accordance with section 29(2) of the above Act.
- 21.5 The Council operates a Tenants and Residents Association scheme but recognition of an association under section 29 of the above Act does not automatically entitle the association to become part of the Council's tenant and resident association scheme or recognition on the Community Engagement's planning and consultation database.
- 21.6 Before granting an award or good governance quality mark to a tenants' association that represents a TMO property, the Council will consult in writing with the TMO. The Council will then consider any TMO's comments made within 14 days of the consultation request as part of any award application decisions.

22. COMMERCIAL PROPERTY MANAGEMENT

- 22.1 The TMO is responsible for all day to day estate management issues which may arise from the management of the Commercial Property listed in Schedule 1 of Chapter 1. The schedule will be updated annually by the TMO and a copy will be provided to the Council. This is also to include all management issues relating to Commercial Property.
- 22.2 The TMO 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. The TMO may offer leases at sub-

market rents, where rental subsidy enables optimal balance of financial (HRA income) and non-financial (services to residents) benefits from the lease as described below in 24.4(b).

22.3 In undertaking its responsibilities, the TMO 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 TMO 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 TMO 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 its tenants and leaseholders to be marketed to other residents of the Royal Borough, where permitted by the Council's planning policies.

22.5 In its responsibility for estate management, the TMO 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, and other such policies that may from time to time apply.
- (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 TMO shall maintain a land register of all the Commercial Property interests, including any non-Council land which the TMO take on leasehold.

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

In its responsibility for lease management, the TMO 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 TMO 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 TMO shall provide the Council with sufficient information to enable it to consider the proposed leases and lettings.

The TMO 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 TMO 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.

23. TEMPORARY ACCOMMODATION MANAGEMENT

23.1 The TMO is responsible for all day to day issues arise that arise from the management of the temporary accommodation shown on the Schedule in Chapter 1. The schedule will be updated annually by the TMO and a copy will be provided to the Council. This is also to include all ancillary land associated with the Property.

23.2 In undertaking its responsibilities, the TMO 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.

23.3 The Council retains responsibility for the following:

- (a) Any strategic decisions concerning the proposed acquisition or disposal of these properties; before reaching a decision on any acquisition or disposal the Council will consult with the TMO on any such proposals which are likely to affect the management of these properties.
- (b) The Clientside monitoring of these arrangements, including arranging contract monitoring meetings. The frequency of these meeting will be determined by the Housing Commissioning Team who will review the management performance of the TMO and discuss operational issues such as when additional Council properties (both General Fund and HRA) become available to be used as temporary accommodation.

CHAPTER 7

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

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

1.1 The Council agrees that there was a transfer of an undertaking under the agreements with the TMO 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 TMO on the same terms and conditions as they had with the Council.

1.2 Clause not included.

1.3 The TMO Staff continue to participate in the Local Government Pension Scheme ("the Scheme") and new TMO staff will be offered membership in accordance with the rules of the Scheme. The TMO 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 TMO and their terms and conditions of employment (including salaries and rates of pay) will be decided by the TMO. The TMO's recruitment policy, disciplinary procedures, and standard terms and conditions for staff are set out in the Annex.

2.2 In employing the Staff the TMO will comply with:

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

3. SECONDMENT OF COUNCIL STAFF TO TMO STAFF

3.1 Clause not included.

4. EMPLOYMENT OF CONTRACTORS

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

4.2 The TMO will only appoint contractors who:

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

4.3 The TMO will only enter into a contract for management, support, repairs or other services, or for Major Works, with a contractor 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 TMO has access to all the Council officers with whom the TMO requires or is likely to require contact in order to fulfil its obligations under this Agreement. A List of Council Officers will be sent to the TMO and updated when necessary.

6. LIAISON OFFICERS

6.1 Clause not included. See Council's procedure guide in the Schedule 3.

7. TMO LIAISON COMMITTEE

7.1 Clause not included.

8. THE COUNCIL'S NOMINEE

8.1 The Council may nominate four nominees (or such greater number as the TMO requests, provided that that number is less than the number of resident members on the TMO Board) to serve as a full voting member or full voting members of any TMO Board.

8.2 The Council will ensure that any nominee will act in the TMO's best interests and will support and assist the TMO in exercising its management functions under this Agreement.

- 8.3 The TMO will co-opt any person nominated by the Council under this clause to serve as a full voting member of the TMO 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 TMO Board may attend and speak (but not vote) at general meetings of the TMO.

9. HELP TO THE TMO

- 9.1 The Council will consider all written requests made by the TMO for help in carrying out any of the obligations of the TMO under this Agreement.
- 9.2 Where a request for help is made by the TMO under this clause the Council will consider the TMO's request and give the TMO written notice of the Council's decision within 21 days of receipt of the request, and:
- a) if it is within the power of the Council and the Council is reasonably able to do so, grant the TMO's request, subject to such terms and conditions (including payment) as the Council may reasonably require; or
 - b) if it refuses the request, give reasons why the Council cannot grant the request in its written notice.

- 9.3 Where the Council agrees to a request for help, the terms and conditions will be confirmed in writing between the Council and the TMO.
- 9.4 The Council agrees to respond to all correspondence from the TMO on matters other than those falling within clause 9.1 within a period that is reasonable for the item of correspondence concerned.

10. SERVICE OF NOTICES

- 10.1 Any notice served by the Council or the TMO under the following clauses:

- a) Chapter 1, clause 19 (notices relating to failure to perform);
- b) Chapter 1, clause 20 (notices relating to the ending of this Agreement);
- c) Chapter 3, clause 3 (notices relating to rent arrears control);
- d) Chapter 6, clause 18 (notices relating to Right to Buy applications); and
- e) Chapter 7, clause 18 (notices relating to dispute or arbitration).

will either be served by email or by hand and receipt acknowledged by the Council's nominated officer or be sent by recorded delivery post to the Council's Offices or, as the case may be, to the TMO's Company Secretary at its Head Office.

- 10.2 All other written notices may be served by post, and service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice and to have been effected at the time at which the letter would be delivered in the ordinary course of post. In the event of a dispute arising as to the service of a notice the burden of proof of posting will rest with the sender.

- 10.3 Except for the notices mentioned in clause 10.1, any notice or letter which the TMO sends to the Council under the terms of this Agreement is to be sent to the Council's appropriate Chief Officer at the Council's Offices. Any notice or letter which the Council sends to the TMO under the terms of this Agreement is to be sent to the Company Secretary of the TMO at the TMO's Head Office.

11. MISDIRECTED NOTICES

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

12. NOTICE OF LEGAL PROCEEDINGS

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

13. INFORMATION TO BE PROVIDED

- 13.1 The TMO will provide the Council with any information the Council may require in order to comply with the obligations imposed on the Council

by law, including any information required by the Regulator District Auditor or the Council's Internal Auditor to carry out their duties.

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

14. CHANGES IN MANAGEMENT OR OWNERSHIP

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

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

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

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

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

15. STATUTORY CONSULTATION

- 15.1 Subject to the provisions of clauses 6 and 7 of Chapter 4 and of clause 15.2, the TMO 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 TMO’s consent. Such consent will not be withheld or delayed without good reason.
- 15.3 If the Council wishes the TMO to carry out statutory consultation on a particular matter the Council will send to the TMO a written request which:
- a) informs the TMO 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 TMO is to complete the consultation.
- 15.4 The Council will provide the TMO with such additional information or assistance as the TMO may require in consulting tenants or leaseholders.
- 15.5 The TMO 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 TMO in carrying out any consultation under this clause.

16. NON-STATUTORY CONSULTATION

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

17. COMPLAINTS ABOUT THE TMO'S OR COUNCIL'S PERFORMANCE AS MANAGER OF THE PROPERTY DWELLINGS

- 17.1 If a tenant, leaseholder or freeholder makes a complaint about the performance of the TMO or the Council in managing the dwelling, the Management Complaint will be investigated in accordance with the Management Complaints Policy and Procedure set out in Schedule 4.
- 17.2 The TMO will provide the Council with the assistance and information it may reasonably require in dealing with a Housing Ombudsman's investigations of a Management Complaint about the TMO's performance as manager of the Property.

18. DISPUTES AND ARBITRATION

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

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

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

18.3 If the Council serves a Notice of Dispute on the TMO, the TMO will, within 14 days of receiving it, consider the dispute at the TMO Board. The TMO will inform the Council in writing of its response and the action (if any) it intends to take to resolve the dispute within seven days of the TMO Board Meeting.

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

- a) request the TMO to give reasoned consideration as to whether the dispute could be settled by mediation or some other form of alternative dispute resolution and to respond in writing within seven days of the request; or
- b) request the TMO to convene a Special General Meeting to consider the dispute. The TMO will within seven days of receiving the request convene a Special General Meeting to be held on the earliest date which complies with the notice provisions of the TMO's constitution for such a meeting. The TMO will inform the Council of its final response and the action (if any) that it intends to take to resolve the dispute within seven days of the Special General Meeting.

- 18.5 If the TMO serves a Notice of Dispute on the Council, the appropriate Chief Officer of the Council will consider the dispute within 14 days of receiving the Notice of Dispute. The Council will inform the TMO in writing of its response and the action (if any) it intends to take to resolve the dispute within 21 days of receiving the Notice of Dispute.
- 18.6 If the TMO is not satisfied with the Council's response to the Notice of Dispute, the TMO may in writing:
- a) request the Council to give reasoned consideration as to whether the dispute could be settled by mediation or some other form of alternative dispute resolution and to respond in writing within seven days of the request; or
 - b) request the Council to consider the dispute at the next meeting of the appropriate Council body. The meeting will consider the dispute and will inform the TMO in writing of the Council's final response and the action (if any) that the Council intends to take to resolve the dispute within seven days of the meeting.
- 18.7 The provisions of Schedule 5 (Alternative Dispute Resolution Procedure) will apply where a request has been made under clause 18(4)(a) or 18(6)(a).
- 18.8 If after the above disputes procedure has been followed the dispute remains unresolved or one party does not follow the dispute process, the Council or, as the case may be, the TMO may refer the dispute to arbitration under the Arbitration Act 1996, giving notice in writing to the other party.
- 18.9 Applications for arbitration will be made to the Chartered Institute of Arbitrators in accordance with the Arbitration Scheme in Schedule 6. The arbitrator will be appointed and the arbitration procedure carried out in accordance with Schedule 6. The decision of the arbitrator will be binding on the TMO and the Council.

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

19. INFORMATION TO THE SECRETARY OF STATE

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

CHAPTER 8

Performance, Monitoring and Reviewing of Standards

1. THE TMO'S PERFORMANCE STANDARDS

- 1.1 In carrying out its management functions under this Agreement the TMO agrees to comply with the policies, procedures and performance standards set out in the Schedules to this Agreement.
- 1.2 To ensure that the TMO complies with the provisions of clause 1.1 the TMO agrees to set the TMO's Key Performance Indicators ("KPIs"), which enable the TMO to measure its performance against the standards it is required to achieve. The Key Performance Indicators will be set in accordance with the provisions of the Schedule.
- 1.3 The TMO agrees to provide information to enable the Council to monitor the effective performance on the TMO. The TMO's Key Performance Indicators will:
 - a) be set in consultation with the Council;
 - b) take into account the length of time the TMO has managed the Property dwellings under this Agreement, the size of the TMO and any local circumstances which may affect performance;
 - c) 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;
 - d) include targets set by the TMO to reflect local circumstances; and
 - e) include, at the Starting Date, the performance indicators listed in the Schedule, which can be varied as provided for in the Schedule.

2. THE COUNCIL'S PERFORMANCE STANDARDS

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

3. REGULAR MONITORING AND DEVELOPMENT MEETINGS

- 3.1 The TMO will provide such information and access to records as the Council may reasonably need to monitor the TMO's performance.
- 3.2 The Council will hold a Monitoring and Development Meeting with the TMO at least once every six months for the purposes of:
 - a) monitoring the performance of the TMO in carrying out its management functions under this Agreement; and
 - b) monitoring the performance of the Council in carrying out its management functions under this Agreement.

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

- 3.3 In light of the periodic monitoring meetings the TMO and the Council should agree on any follow up action. Where it is agreed the Council will prepare a report which evaluates the TMO's and its own performance, this should be sent to the TMO Board and its contents fed into the Council's own internal monitoring arrangements.
- 3.4 The Council will ensure that the obligations imposed on the TMO under clause 3.2 are not so onerous, as to prevent the TMO from fulfilling its obligations under this Agreement or to impair its ability to fulfil those obligations.

4. ANNUAL REVIEW

- 4.1 The Council and the TMO should agree the frequency with which the TMO reviews its performance, and the arrangements for such a review. This should not be more frequently than once per year, and should involve the TMO comparing its performance against the agreed key performance indicators. Where the TMO requests the Council not to publish any indicator on the grounds that it may reveal confidential information about a tenant or employee, the Council will comply with the request if it is reasonable to do so in the particular circumstances of the case. The Council will provide the necessary information for the TMO to publish the TMO's Performance Report.
- 4.2 The TMO will send a copy of the TMO's Performance Report to the Council. It is good practice for the TMO to also make available information regarding its performance to every tenant, leaseholder and freeholder. The TMO may also make the information available to others, on request. The Council and TMO should decide on the next steps following the performance review report, ideally within three months of completion. This could include a meeting to consider their respective performance and decide on the action needed to rectify any deficiencies in the TMO's or the Council's performance. Nothing in this clause prevents the Council or the TMO taking action for breach of this

Agreement in respect of deficiencies in performance under clause 19 of Chapter 1.

- 4.3 Within three months of the date of a Review Meeting the Council will produce a report of the meeting. This report should be made available to the TMO's Board.

5. EQUALITIES AND DIVERSITY

- 5.1 The Council and the TMO should decide how frequently the Council measures the effectiveness of the TMO's Equalities and Diversity Policy and Procedures and report to the TMO's Board on its findings. The TMO will consider the report and make such changes as the Council may reasonably require ensuring that the TMO complies with implementing its Equality and Diversity Policy and Procedures (see Chapter 1, clause 10).

6. PERIODIC AND SPECIAL REVIEWS

- 6.1 The Council and the TMO will decide the arrangements for measuring the total performance of the TMO in carrying out its management functions under this Agreement. Subject to clauses 6.7 this review should not be held more frequently than once every three year. In monitoring the TMO's performance the Council and the TMO should agree the matters to be included.
- 6.2 As soon as may be practicable after completing the review the Council will produce a Review Report which will:
- a) identify the deficiencies (if any) in the functioning or performance of the TMO
 - b) make positive recommendations as to the action and practical steps which the TMO needs to take; and
 - c) set out the periods within which the Council considers that remedial action should be taken

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

- 6.3 Within two months of receipt of the Review Report the TMO will respond in writing to the Review Report setting out:
- a) the recommendations for action which the TMO accepts, setting out the TMO's plan and periods within which those recommendations will be implemented; and
 - b) the findings and recommendations (if any) with which the TMO disagrees, stating the reasons for the disagreement and the evidence relied upon as showing that the Council has reached incorrect conclusions.
- 6.4 If the TMO disagrees with the Review Report and responds to it under clause 6.3 b) , the Council will, within one month of receiving the TMO's response, give reasoned consideration to the TMO's response and, in writing, either:
- a) accept the TMO's response and amend the findings and recommendations for action in the Review Report; or
 - b) give reasons why the TMO's response is not accepted by the Council and require the TMO, within one month, to submit its written plan for implementing the recommendations.
- 6.5 If a disagreement remains between the Council and the TMO after the Council has given reasons in accordance with clause 6.4 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.
- 6.6 The Review Report will form the basis of the information presented to the tenants and leaseholders by the TMO before a decision under

clause 17 of Chapter 1 as to whether the TMO is to continue as manager of the Property dwellings.

- 6.7 Where the Council has reason to believe that there are serious failings in the financial performance, management or governance of the TMO, and that there is no realistic prospect of remedying the situation by taking action under any other provision of this Agreement, it may carry out a Special Review under the provisions of this clause even though the previous review took place within the last two years. The consent of the TMO is required that the persons proposed by the Council to carry out the Special Review may so act, but such consent is not to be unreasonably withheld.
- 6.8 The carrying out of a Special Review does not prevent the Council from taking action against the TMO for breach of this Agreement in respect of deficiencies in performance under Clause 19 of Chapter 1.

7. TMO STRATEGIC DOCUMENTS AND POLICIES

- 7.1 The TMO will provide the Council with a programme of relevant policy reviews and updates scheduled each year so that a decision can be made if the policies are subject to approval by the Council. The TMO will provide all the relevant background information and representatives to outline any proposals.
- 7.2 The TMO will be responsible for informing members of the TMO Board where there are new strategy and policy documents being introduced, subject to consultation or being implemented.

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 Chapter 5, clause 1)

The annual sum of money paid by the Council to the **TMO** to carry out the **TMO's** management functions under this Agreement.

Annual Accounts

(Chapter 5, clause 10)

The financial statements prepared under Companies Act and Generally Accepted Accounting Practice in the UK (UK GAAP) is the body of accounting standards and other guidance published by the UK Accounting Standards Board (ASB).

ALMO

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

The TMO is recognised by the Approved Person as an Arms Length Management Organisation for major works.

Annual Review

(Chapter 8, clause 4)

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

Annual Review Meeting

(Chapter 8, clause 4)

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

Anti-Social Behaviour and Harassment Policy and Procedure

(Chapter 6, clause 9)

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

Application to Exchange

(Chapter 6, clause 12)

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

Approved Person

(Chapter 1, clause 18)

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

Arrears Prevention and Control Procedures

(Chapter 3, clause 1)

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

Breach Notice

(Chapter 1, clause 19)

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

Breach

(Chapter 6, clause 7)

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

Claim to the Right of Succession

(Chapter 6, clause 16)

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, and updated by section 160 of the Localism Act 2011.

Commercial Property

(Chapter 3, clause 2.1)

The garages, hardstandings and parking spaces ancillary to the Property, property outside the HRA, temporary accommodation, intermediate housing, shops, artist's studios, and any other properties that the Council shall so determine to be managed by the TMO and listed in Schedule 1 of Chapter 1.

Code of Confidentiality

(Chapter 1, clause 9.4)

The Data Protection Statement of the TMO.

Constitution

(Chapter 1, clause 3.1)

The Articles of Association of the TMO.

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 included.

Council's Approved List

Clause not included.

Council's Key Performance Indicators

(Chapter 8, clause 2)

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

Council's Offices

(Chapter 7, clause 10)

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

Council's Representatives

(Chapter 7, clause 7)

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

Crime and Disorder Reduction Partnership

(Chapter 6, clause 2)

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

Equal Opportunities Policy and Procedures

(Chapter 1, clause 10)

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

Estate Services

(Chapter 2, clause 10)

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

Failure Notice

(Chapter 1, clause 19)

Written notice from the **TMO** to the Council that the Council is not fulfilling one or more of its obligations in respect of management

functions not being exercised by the **TMO** or its obligations under the Agreement.

Financial Procedures

(Chapter 5, clause 2)

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

Financial Report

(Chapter 5, clause 10, Option A)

The Annual Accounts for the past Financial Year.

Financial Year

(Chapter 5, clause 6)

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

Flexible tenancies

(Chapter 6, clause 12.1)

A secure tenancy with a term of not less than 2 years and not more than 5 years.

Former Tenants' Arrears

(Chapter 3, clause 5)

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

Ground Rent

(Chapter 4, clause 4)

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

Improvement Notice

(Chapter 2, clause 12)

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

Improvement Plan

(Chapter 1, clause 19)

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

Improvements Policy and Procedure

(Chapter 2, clause 12)

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

Insurance Repairs

(Chapter 2, clause 9)

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

Introductory Tenancy

(Chapter 6, clause 5)

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

Leaseholder

(Chapter 1, clause 2)

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

Local Lettings Policy

(Chapter 6, clause 2)

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

List of Council Officers

(Chapter 7, clause 5)

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

Major Works

(Chapter 2, clause 6)

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

Management and Maintenance Costs

(Chapter 5, clause 3)

Part of the HRA, costs incurred by the **TMO** in exercising its management functions, including the carrying out of repairs.

Management Complaint

(Chapter 7, clause 17)

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

Management Complaints Policy and Procedure

(Chapter 7, clause 17)

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

Management Functions

(Chapter 2, clause 1)

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

Modular Management Agreement

(Chapter 1, clause 4)

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

Monitoring and Development Meeting

(Chapter 8, clause 3)

Meeting between the Council and the **TMO** held at least once every six months to monitor the performance of the **TMO** and the Council in carrying out their respective management functions under this Agreement.

Notice of Dispute

(Chapter 7, clause 18)

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

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

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 6)

The report produced by the Council on its completion of a **Periodic Review** or **Special Review**.

Right of Succession Notice

(Chapter 6, clause 16)

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

Right of Succession Policy

(Chapter 6, clause 16)

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 and 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 and Chapter 7, clause 14)

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

Right to Manage

(Chapter 1, clause 18)

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

Right to Manage Regulations

(Chapter 1, clause 3)

The Housing (Right to Manage) (England) Regulations 2012

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.

Secure tenant

(Chapter 1, clause 17)

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

Selection of Tenants Policy and Procedure

(Chapter 6, clause 3)

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

Service Charges

(Chapter 4, clause 1)

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

Service Charges Procedure

(Chapter 4, clause 1)

The procedure for dealing with leaseholder and freeholder service charges as set out in the Schedule to Chapter 4.

Special Review

(Chapter 8, clause 6)

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

Starting Date

(Chapter 1, clause 5)

The Management Agreement starts on 1st December 2015.

Starting Date Arrears

(Chapter 3, clause 4)

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

Supervision Notice

(Chapter 1, clause 19)

A notice served by the Council on the **TMO** with the effect that relevant management functions become exercisable by the Council's direction for such period as is specified in the notice.

Supervision Termination Notice

(Chapter 1, clause 19)

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

Surplus Fund

(Chapter 5, clause 10)

The Profit and Loss Account as required by the Companies Act is shown in the **TMO's** Annual Accounts and on its balance sheet.

Tenancy Agreement

(Chapter 3, clause 2)

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

Tenancy Variation Notice

(Chapter 6, clause 6)

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

Tenant

(Chapter 1, clause 2)

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

TMO

(Title Page)

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

TMO's Approved List

(Chapter 7, clause 4)

Clause not included.

TMO Board

(Chapter 7, clause 8)

A Board of the **TMO** properly constituted under the **TMO's** Constitution.

TMO's Key Performance Indicators

(Chapter 8, clause 1)

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

TMO's Performance Report

(Chapter 8, clause 4)

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

TMO's Registered Office

(Chapter 7, clause 10)

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

Total Rent

(Chapter 3, clause 7)

A figure representing the rent that the Council would charge if managing the **Property**, plus any additional tenant service charges required by the **TMO**.

Warning Notice

(Chapter 1, clause 19)

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

Working day

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