



Department for  
Communities and  
Local Government

# The Right to Manage Guidance

Modular Management Agreement for Tenant Management  
Organisations

Part 2

© Crown copyright, 2013

*Copyright in the typographical arrangement rests with the Crown.*

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This document/publication is also available on our website at [www.gov.uk/dclg](http://www.gov.uk/dclg)

If you have any enquiries regarding this document/publication, email [contactus@communities.gov.uk](mailto:contactus@communities.gov.uk) or write to us at:

Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: <https://twitter.com/CommunitiesUK>

December 2013

ISBN: 978-1-4098-4051-0

# Contents

## Chapter 1

The agreement	8
General Provisions of the Agreement	10
Clause 1 Parties to the Agreement	10
Clause 2 The Council and the Property	10
Clause 3 The Tenant Management Organisation	10
Clause 4 Statement of Exercise of Management Functions under the Right to Manage	10
Clause 5 Starting Date	11
Clause 6 The Tenant Management Organisation's Exercise of Management Functions	11
Clause 7 Insurance	12
Clause 8 Exclusion of section 27(13) of the Housing Act 1985 and General Indemnity	12
Clause 9 Confidentiality	12
Clause 10 Equal Opportunities	13
Clause 11 Training	14
Clause 12 Information to Tenants	14
Clause 13 Conflicts of Interest	14
Clause 14 Right to Represent	15
Clause 15 Council's Right of Access to Dwellings	15
Clause 16 Interpretation of this Agreement and General Provisions	15
Clause 17 Decision to Continue this Agreement	16
Clause 18 Variations to this Agreement	17
Clause 19 Failure to Perform	19
Clause 20 Ending this Agreement	21

Schedule 1 Property included in the Management Agreement

Schedule 2 Equal Opportunities Policies and Procedures

Schedule 3 Supervision Notice Policy and Procedure

Annex A Copy of the Tenant Management Organisation's Constitution

## Chapter 2

Repairs, Maintenance and Services Provision	24
Clause 1 Functions of the Tenant Management Organisation in respect of Responsive and Planned Maintenance Repairs	24
Clause 2 Functions of the Council in respect of Repairs	25
Clause 3 Failure to Repair	25
Clause 4 Major Works: Initiation by the Council	26
Clause 5 Requests for Major Works by the Tenant Management Organisation	27
Clause 6 Major Works	27
Clause 7 Partnering Contracts made by the Council with third parties in respect of Major Works	31

Clause 8 Replacement Repairs	31
Clause 9 Repairs Covered by the Council's Buildings Insurance	31
Clause 10 Provision of Estate Services	34
Clause 11 Technical Advice	35
Clause 12 Right to Improve and Leaseholder Improvements	35
Clause 13 Right to Repair	35
Schedule 1 Functions and Performance Standards of the Tenant Management Organisation and the Council in respect of Repairs	
Schedule 2 Procedure for Consultation on Major Works	
Schedule 3 Procedures and Performance Standards for entering into and supervising Major Works	
Schedule 4 The Tenant Management Organisation's Major Works Functions	
Schedule 5 Procedure for Repairs Arising from Events Covered by the Council's Building Insurance	
Schedule 6 Functions and Performance Standards of the Tenant Management Organisation and the Council in respect of Estate Services	
Schedule 7 Improvements Policy and Procedure	
Schedule 8 Right to Repair Policy and Procedure	
<b>Chapter 3</b>	
Rent (including Tenant Service Charges)	37
Clause 1 Confidentiality and Procedures	37
Clause 2 Rent Collection from Tenants	37
Clause 3 Rent Arrears Control	38
Clause 4 Collection of Arrears due at the Starting Date	42
Clause 5 Former Tenants' Arrears	43
Clause 6 Housing Benefit Payments	45
Clause 7 Setting Rent Payable by Tenants	46
Clause 8 Notification of Rent Changes	47
Clause 9 Payment to the Council of Rent due	47
Clause 10 Voids Allowances	49
Clause 11 Bad Debts/ Write offs	50
Clause 12 Voids and Rents waivers	50
Schedule 1 Rent Collection and Arrears Control Procedure	
Schedule 2 Tenant Service Charge Procedure	
<b>Chapter 4</b>	
Leaseholder and Freeholder Service Charges	52
Clause 1 Confidentiality and Procedures	52
Clause 2 Information	52
Clause 3 Service Charges: Calculation, sending of Demands and Collection	52
Clause 4 Service Charge and Ground Rent Arrears	54
Clause 5 Consultation Provisions under the Landlord and Tenant Act 1985 relating to Service Charges where both the Council and the Tenant Management Organisation provide services	55
Clause 6 Supplementary provisions in relation to clause 5	55

Clause 7 Other Provisions of the Landlord and Tenant Act 1985 relating to Service Charges	56
Clause 8 Payment of Service Charges and Ground Rent to the Council	56
Clause 9 Financial Incentives and Penalties in relation to Collection of Service Charge Arrears	57

## The Schedule Service Charges Procedure

## **Chapter 5**

Financial Management	58
Clause 1 Calculation of Allowances	58
Clause 2 Payment of Allowances	59
Clause 3 Payment of Management and Maintenance Costs and Administrative Expenses incurred by the Tenant Management Organisation	60
Clause 4 The Tenant Management Organisation's Banking Arrangements	61
Clause 5 Financial Control and Accounting Standards	62
Clause 6 Financial Year	63
Clause 7 Restriction on Investments	63
Clause 8 Reserve Funds	63
Clause 9 Major Works Account	64
Clause 10 Financial Report and Surplus Fund	64
Clause 11 Loans to the Tenant Management Organisation	66
Clause 12 Interest on late Payments	67
Clause 13 Set Off of Payments	67
Clause 14 Registration for VAT	68

## Schedule 1 Calculation and Payment of Allowances

## Schedule 2 Financial Procedures

## Schedule 3 Accounts and Audit

## **Chapter 6**

Tenancy Management	69
Clause 1 Information to Housing Applicants	69
Clause 2 Consultation between the Tenant Management Organisation and the Council	69
Clause 3 Selection of Tenants of vacant Property dwellings	70
Clause 4 Transfers	73
Clause 5 Introductory Tenancies	74
Clause 6 Variations to the Tenancy Agreement	74
Clause 7 Breach of a tenancy agreement, term of a lease, or covenant in a freehold transfer	76
Clause 8 Ending and renewing Flexible Tenancies	78
Clause 9 Anti-social Behaviour and Harassment	79
Clause 10 Residents' Disputes	79
Clause 11 Unlawful Occupation	80
Clause 12 Void Dwellings	81
Clause 13 Right to Exchange	82

Clause 14 Right to Assign restricted category of Persons	82
Clause 15 Applications to Sublet	83
Clause 16 Right of Succession	83
Clause 17 Giving Consents	85
Clause 18 Right to Buy and Sales	85
Clause 19 Enquiries before Exchange of Contracts	90
Clause 20 Use of the Property	90

Schedule 1 Introductory Meetings for Housing Applicants	
Schedule 2 Selection of Tenants Policy & Procedure	
Schedule 3 Introductory Tenancies	
Schedule 4 Tenancy Agreement Changes Procedure	
Schedule 5 Breach of tenancy agreement, term of a lease, or covenant in a freehold transfer	
Schedule 6 Anti-Social Behaviour and Harassment Policy and Procedure	
Schedule 7 Residents' Disputes Policy and Procedure	
Schedule 8 Mutual Exchanges Policy And Procedure	
Schedule 9 Sub-Letting Policy	
Schedule 10 Giving Consents	
Schedule 11 Right To Buy: Enquiries before Exchange of Contracts	

Annex A The Tenancy Agreement

Annex B Succession Policy

## **Chapter 7**

Staffing and Management of the Relationship between the Tenant Management Organisation and the Council	91
--	----

Clause 1 The transfer of staff from the Council to the Tenant Management Organisation where there is a transfer of an undertaking by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 1981	91
Clause 2 Employment of Staff (other than those transferring under clause 1)	92
Clause 3 Secondment of Council Staff to the Tenant Management Organisation	93
Clause 4 Employment of Contractors	94
Clause 5 Access to Council Officers	97
Clause 6 Liaison Officers	97
Clause 7 Tenant Management Organisation Liaison Committee	98
Clause 8 The Council's Nominee	98
Clause 9 Help to the Tenant Management Organisation	101
Clause 10 Service of Notices	102
Clause 11 Misdirected Notices	103
Clause 12 Notice of Legal Proceedings	103
Clause 13 Information to be provided	103
Clause 14 Changes in Management or Ownership	104
Clause 15 Statutory Consultation	104
Clause 16 Non-statutory Consultation	105
Clause 17 Complaints about the Tenant Management Organisation's or Council's Performance as Manager of the Property dwellings	105
Clause 18 Disputes and Arbitration	105
Clause 19 Information to the Secretary of State	107

Schedule 1 Staff Transferred under the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE)

Schedule 2 The Secondment Arrangements for Council Staff

Schedule 3 Liaison Officer Role and Responsibilities

Schedule 4 Management Complaints Policy And Procedure

Schedule 5 Alternative Dispute Resolution Procedure

Schedule 6 Arbitration Procedure

The Annex The Recruitment Policy, Disciplinary Procedure & Standard Terms & Conditions for Staff

## **Chapter 8**

Performance, Monitoring and Reviewing of Standards 108

Clause 1 The Tenant Management Organisation's Performance Standards 108

Clause 2 The Council's Performance Standards 108

Clause 3 Regular Monitoring and Development Meetings 109

Clause 4 Annual Review 109

Clause 5 Equal Opportunities Monitoring 110

Clause 6 Periodic and Special Reviews 110

The Schedule Key Performance Indicators

The Annex Comparators

## **Chapter 9**

Definition of Terms and Location of First Use of a Term 114

### **Note on Schedules And Annexes**

An individual Agreement entered into by a Tenant Management Organisation and a Council will consist of:

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

The Schedules have to comply with the statutory guidance, given under the Housing (Right to Manage) Regulations 2012 by the Secretary of State, and this is set out in the Guidance on the Schedules. This publication also contains non-statutory guidance, prepared by DCLG. The non-statutory guidance which, unlike the statutory guidance, is not binding, is intended to assist Tenant Management Organisations and Councils to prepare the Schedules to their individual Agreements.

# This agreement

is made the ..... day of ..... 20

BETWEEN ..... AND .....

(Name of local housing authority)  
(called “the Council” in this Agreement)

(Name of Tenant Management Organisation)  
(called “the Tenant Management  
Organisation” in this Agreement)

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

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

Terms that appear in Bold Letters are defined in Chapter 9.

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

Signed .....  
Borough Solicitor/Chief Executive

This Agreement is sealed with the Tenant Management Organisation's common seal by resolution of the Tenant Management Organisation.

Signed ..... Committee Member

Signed ..... Committee Member

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

This Modular Management Agreement for Tenant Management Organisations is approved by the Secretary of State under regulation 16(2) of the Housing (Right to Manage) Regulations 2012, and replaces that approved in 1994.



Clause 18(1)(f) of Chapter 1 of the 1994 Modular Management Agreement permits a Tenant Management Organisation and a local housing authority to agree to vary an agreement they have entered into on the basis of the 1994 Modular Management Agreement, to conform to this Modular Management Agreement.

# Chapter 1

## General Provisions of the Agreement

### 1 Parties to the Agreement

1.1 This Agreement is made between the Council and the Tenant Management Organisation.

### 2 The Council and the Property

2.1 The Council is a local housing authority under Part 2 of the Housing Act 1985. The Council is the freehold or leasehold owner of the **Property** which constitutes the subject-matter of this Agreement and has management functions in respect of it. The dwellings and land constituting the **Property** are listed in Schedule 1 (**Property included in the Management Agreement**) and in this Agreement, unless a contrary intention appears:

- a) a reference to a dwelling shall be construed as a reference to a dwelling listed in that Schedule (a “Property dwelling”);
- b) a reference to a tenant, leaseholder, freeholder or lawful occupier shall be construed as a reference to a tenant, leaseholder, freeholder or lawful occupier of a **Property dwelling**.

### 3 The Tenant Management Organisation

3.1 The **Tenant Management Organisation** is [insert type of organisation, e.g. an organisation registered under the provisions of the Industrial and Provident Societies Act 1965; or a company limited by guarantee registered under the provisions of the Companies Act 2006]. The **Tenant Management Organisation’s** constitution is set out in Annex A.

3.2 While this Agreement is in force the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** 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**.

4.2 Nothing in this Agreement gives the **Tenant Management Organisation** any ownership or other legal rights, or imposes any obligations in respect of the **Property** other than the right to manage and maintain the **Property**. Nothing in this Agreement affects the Council's legal relationship with its tenants or leaseholders and the Council retains its statutory, contractual and common law obligations to them and all other clauses in this Agreement are subject to this clause.

## 5 Starting Date

5.1 (*Option A: The same **Starting Date** for all functions exercised by the **Tenant Management Organisation**.*) The **Tenant Management Organisation** will exercise the functions it has agreed to exercise under this Agreement from the **Starting Date** of [ ] until the date on which this Agreement is ended in accordance with clause 20.

## 5 Starting Date

5.2 (*Option B: Staggered start dates for different functions exercised by the **Tenant Management Organisation** or for different dwellings.*)

The **Tenant Management Organisation** will exercise the functions it has agreed to exercise under this Agreement from the **Starting Date** until the date on which this Agreement is ended in accordance with clause 20 with the exceptions set out below:

*(Drafting note: list here the chapter, clause number references and brief description of functions which have a different start date from the **Starting Date**, specifying the start date in each case, and list the dwellings and land held for a related purpose in respect of which there is a start date different from the **Starting Date**, specifying the start date in each case.)*

## 6 The Tenant Management Organisation's Exercise of Management Functions

6.1 The **Tenant Management Organisation** will carry out management functions for the **Property** in accordance with the terms of this Agreement.

6.2 In carrying out these functions the **Tenant Management Organisation** will comply with the Council's legal obligations.

6.3 The **Tenant Management Organisation** may, with the consent of the Council, appoint another person to carry out management functions.

6.4 The **Tenant Management Organisation** agrees to exercise its functions in accordance with the performance standards set out in the Schedule to Chapter 8. The **Tenant Management Organisation** 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 **Tenant Management Organisation** will comply with obligations imposed by law on the Council in so far as such obligations apply to the **Tenant Management**

**Organisation**, and obligations imposed by law on the **Tenant Management Organisation**.

## 7 Insurance

7.1 The Council will insure against the following risks: *(Drafting note: specify here the insurance risks against which the Council will insure.)*

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

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

*(Drafting note: specify here the insurance risks against which the **Tenant Management Organisation** will insure, being risks arising out of the management functions the **Tenant Management Organisation** is exercising under this Agreement.)*

## 8 Exclusion of Section 27(13) of The Housing Act 1985 and general Indemnity

8.1 The Council and the **Tenant Management Organisation** agree, under the provisions of section 27(15)(a) of the Housing Act 1985, that the provisions of section 27(13) of that Act do not apply to any management function of the Council exercisable by the **Tenant Management Organisation** under this Agreement. Accordingly, the **Tenant Management Organisation** will indemnify the Council against any loss or damage which the Council suffers as a result of an error or failure by the **Tenant Management Organisation** in fulfilling its obligations under this Agreement or as a result of such an error or failure by another person appointed by the **Tenant Management Organisation** in accordance with clause 6.3.

8.2 Subject to the provisions of clause 1 of Chapter 7 in respect of the transfer of employees, the Council will indemnify the Tenant Management Organisation against any loss or damage which the Tenant Management Organisation suffers as a result of an error or failure by the Council in fulfilling its obligations under this Agreement or as a result of such an error or failure by a contractor.

## 9 Confidentiality

9.1 The **Tenant Management Organisation** will treat as strictly confidential all information in its possession in relation to tenants, leaseholders and freeholders of a dwelling. The **Tenant Management Organisation** will use such information only for the purpose of fulfilling its obligations under this Agreement. The **Tenant Management Organisation** 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 **Tenant Management Organisation** will register if necessary as data users and comply with the requirements of the Data Protection Act 1998.

9.4 The **Tenant Management Organisation** agrees to publish a Code of Confidentiality.

## **10 Equal Opportunities**

10.1 The **Tenant Management Organisation** will act in accordance with its **Equalities and Diversity Policy and Procedures** set out in Schedule 2. The **Tenant Management Organisation** will operate equal opportunities policies and procedures in exercising all of its functions under this Agreement. By implementing equal opportunities policies and procedures the **Tenant Management Organisation** will ensure that it does not discriminate against any person. The protected characteristics groups referred to Equalities Act 2010 are disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex and sexual orientation. This includes criminal convictions, HIV and AIDs, class and appearances.

10.2 The **Tenant Management Organisation** will have regard to any current guidance issued with central government approval.

10.3 The **Tenant Management Organisation** will supply the following persons with a statement of the **Tenant Management Organisation's Equalities and Diversity Policy and Procedures**:

- a) every member of the **Tenant Management Organisation**;
- b) every person applying for a tenancy of a dwelling; and
- c) any other person requesting a copy, upon payment of a reasonable charge.

10.4 The **Tenant Management Organisation** will keep proper records of the implementation of its **Equalities and Diversity Policies and Procedures** in all aspects of its work including:

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

## 11 Training

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

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

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

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

## 12 Information to Tenants

12.1 The **Tenant Management Organisation** will provide the tenants and leaseholders of dwellings with information about the workings of the **Tenant Management Organisation**.

## 13 Conflicts of Interest

13.1 The **Tenant Management Organisation** will provide in its standing orders that a committee member, officer or employee of the **Tenant Management Organisation** 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

**Tenant Management Organisation** will, in reaching its decision on the matter, ensure that corrupt, undue or unfair personal gain is avoided.

- 13.2 Committee members and officers of the **Tenant Management Organisation** 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 **Tenant Management Organisation's** main office. It will be open to inspection during the **Tenant Management Organisation'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 **Tenant Management Organisation** to act as his or her representative in dealings with the Council, the Council will accept the **Tenant Management Organisation** as such a representative.
- 14.2 Where the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation'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 **Tenant Management Organisation** 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 16 of the **Right to Manage Regulations** and contained in the Guidance on the Schedules.

16.3 The **Tenant Management Organisation** is required to operate in an open and transparent way. The **Tenant Management Organisation** constitution must ensure that all tenants and leaseholders are entitled to become members and require the Board to be fully accountable to its members. The **Tenant Management Organisation** must publish a Code of Governance, which has regard to the Code of Governance for Tenant Management Organisations published by the National Federation of Tenant Management Organisations. The Code of Governance should incorporate policies requiring transparency in relation to, for example: confidentiality, conflicts of interest, minutes of meetings and finance.

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

- a) a reference in this Agreement to an Act of Parliament or a Statutory Instrument is a reference to that Act or Statutory Instrument as amended from time to time;
- b) a reference to a numbered clause in a Chapter is, unless a different Chapter is specified in relation to that clause, a reference to the clause bearing that number in that Chapter, and a reference to a numbered Schedule in a Chapter is, unless a different Chapter is specified in relation to that Schedule, a reference to the Schedule bearing that number to that Chapter;
- c) words in the singular include the plural, and *vice versa*;
- d) words importing the masculine gender include the feminine, and *vice versa*; and
- e) where the Agreement provides that a party to the Agreement “will” perform some action, this is to be interpreted as providing that that party accepts as a term of this Agreement that it will perform that action, and that failure to do so will constitute a breach of the Agreement.

## 17 Decision to Continue this Agreement

17.1 At each Annual General Meeting after the second anniversary of the **Starting Date**, the **Tenant Management Organisation** 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 **Tenant Management Organisation** will hold a Special General Meeting within 30 days to consider the giving of the three months’ notice of termination of this Agreement under the provisions of clause 20.2.4 below.

17.2. At least every five years the **Tenant Management Organisation** 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 **Tenant Management Organisation** as manager of the **Property**; and



b) whether:

i) the majority of those responding; and

ii) the majority of secure tenants responding, wish the **Tenant Management Organisation** to continue as manager of the **Property** under this Agreement.

17.3 If the majority of those responding to the consultation and a majority of secure tenants responding do not wish the **Tenant Management Organisation** to continue as manager of the **Property**, the **Tenant Management Organisation** 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 **Tenant Management Organisation** will inform the Council of the result of any consultation exercise under clause 17.2 above within 21 days of the date of the ballot or, as the case may be, within 21 days of the closing date for returning the questionnaire. If a ballot is held under clause 17.3 and the majority of those voting and a majority of secure tenants voting still do not wish the **Tenant Management Organisation** to continue as manager of the **Property** the **Tenant Management Organisation** 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 **Tenant Management Organisation**:

i) obtaining certification by an **Approved Assessor** that, in relation to additional management functions that the **Tenant Management Organisation** wishes to exercise which are included as options in the **Modular Management Agreement**, the **Tenant Management Organisation** has the required level of competence; and

ii) then giving the Council at least four months written notice, or such other period as may be agreed, that it has decided by a simple majority vote at a general meeting to take on those management functions, in which case this Agreement will be varied by adopting the appropriate clauses of the **Modular Management Agreement**.

b) by the **Tenant Management Organisation**, giving the Council at least four months written notice, or such other period as may be agreed, that it has decided by a simple majority vote at a general meeting to cease exercising a management function specified in this Agreement and that it wishes the Council to resume exercising that management function. The Agreement will be varied by adopting the appropriate optional clauses in the **Modular Management Agreement**;

c) by the Council and the **Tenant Management Organisation** 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 **Tenant Management Organisation** agreeing to vary the Agreement by selecting different options from the **Modular Management Agreement**;
- e) by the Council and the **Tenant Management Organisation** agreeing, under clause 10.2 of Chapter 2, that the Council will take over the **Estate Services** that have been provided by the **Tenant Management Organisation**;
- 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** and the Council agreeing to replace the clauses in this Agreement corresponding to the modified clauses with those clauses.

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

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

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

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 **Tenant Management Organisation**. 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 **Tenant Management Organisation** agree that the effect of:

- a) a tenant of a dwelling exercising the **Right to Buy** his or her home under the provisions of Part 5 of the Housing Act 1985;
- b) a leaseholder exercising the **Right to Enfranchise** under the Leasehold Reform, Housing and Urban Development Act 1993; or

c) the application of regulation 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 **Tenant Management Organisations** which manage more than 2,500 homes to form their own smaller **Tenant Management Organisation**, will be to vary this Agreement in the appropriate manner solely by virtue of this clause. Such a variation will come into effect, together with the necessary adjustments to the **Allowances**, from the date on which the **Right to Buy** or the **Right to Enfranchise** purchase is completed or the relevant **Starting Date** of the management agreement under the **Right to Manage** comes into force.

## **19 Failure To Perform [Link to Chapter 7 and Chapter 8]**

- 19.1 Without affecting any other rights the Council may have under this Agreement or in law the following provisions of this clause will apply where the Council is of the opinion that there has been a failure to perform by the **Tenant Management Organisation**.
- 19.2 Subject to the provisions of clause 19.9, in the event of the **Tenant Management Organisation** 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 **Tenant Management Organisation**, the Council will work with the **Tenant Management Organisation** to develop, agree and implement an **Improvement Plan** to improve the performance in order to reach those standards or prevent serious financial breaches.
- 19.3 In order to assist with the development of an **Improvement Plan** with which the **Tenant Management Organisation** is in agreement, the Council may, in the first instance, appoint an independent person to advise on the performance standards of the **Tenant Management Organisation**, the action proposed by the Council, and the views of and to recommend to the Council and the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** failing to implement the **Improvement Plan** (including such failure following the appointment of an independent person in accordance with clause 19.3 and any recommendations made by him), the Council may serve a **Breach Notice** on the **Tenant Management Organisation**. Within 21 days of receipt of a **Breach Notice** the **Tenant Management Organisation** will remedy the breach or notify the Council in writing why it cannot remedy the breach within this period, and specify the date by which the breach will be remedied.
- 19.5 If the breach is not remedied within 21 days of receipt of a **Breach Notice**, or within such other reasonable period as specified in the notice, or the Council does not accept the adequacy of the reasons given by the **Tenant Management Organisation** why it cannot remedy the breach within this period, or does not accept the date specified by the **Tenant Management Organisation** as the date by which the breach will be remedied, the Council may serve a **Warning Notice**, warning the **Tenant**

**Management Organisation** that unless the breach is remedied within a specified period the functions specified will be removed from the functions being exercised by the **Tenant Management Organisation**.

- 19.6 If the **Tenant Management Organisation** has not corrected the breach within the specified period of receiving the **Warning Notice**, the Council may in writing terminate the **Tenant Management Organisation's** exercise of the functions specified in the **Breach Notice** and **Warning Notice** from a specified date. The **Tenant Management Organisation** will have to wait 24 months (or such shorter period as the Council may decide) before it can resume exercising the functions by virtue of the application of clause 18.1.a).
- 19.7 Without affecting any other rights the **Tenant Management Organisation** may have under this Agreement or at law:
- 19.7.1 if the Council does not fulfil any of its obligations in respect of management functions not being exercised by the **Tenant Management Organisation** under this Agreement or its obligations under this Agreement, the **Tenant Management Organisation** may serve a **Failure Notice** on the Council; and
- 19.7.2 within 21 days of receipt of a **Failure Notice** the Council will remedy the failure or notify the **Tenant Management Organisation** in writing why the Council cannot remedy the failure within this period and specify the date by which the failure will be remedied.
- 19.8 In the event of any management function becoming exercised again by the Council under the terms of clause 19.6 the **Allowances** will be reduced by an amount (calculated in accordance with Schedule 1 to Chapter 5) which reflects the reduction in the number of management functions exercised by the **Tenant Management Organisation**.
- 19.9 Where the Council is satisfied that there are serious failings of the **Tenant Management Organisation** as described in clause 6.7 of Chapter 8, the Council may serve a **Supervision Notice** in respect of all of the **Tenant Management Organisation's** management functions or those of its management functions that are specified in the **Supervision Notice**. The provisions of Schedule 3 (**Supervision Notice Policy and Procedure**) shall apply to **Supervision Notices** and the action that can be taken after a **Supervision Notice** has been served.
- 19.10 The effect of the service of a **Supervision Notice** is that the relevant management functions become exercisable by direction of the Council from such date as is specified in the Notice and for such period as is specified in the Notice, unless the Council specifies a shorter period after the Notice has been served.

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

- 19.11 Where the Council proposes to serve a **Supervision Notice** on the **Tenant Management Organisation**, in a case where a **Special Review** has not taken place, the **Tenant Management Organisation** 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 **Tenant Management Organisation**, 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 **Tenant Management Organisation** is required that the person proposed by the Council for these purposes may so act, but such consent is not to be unreasonably withheld.
- 19.12 Where the relevant conditions set out in the **Supervision Notice** are satisfied, the Council will restore to the **Tenant Management Organisation** 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 **Tenant Management Organisation**, which will specify the date from which the exercise of those functions will be restored.

## 20 Ending this Agreement

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

20.2 This Agreement will end:

20.2.1 upon service of a written notice by the Council if the **Tenant Management Organisation**:

- 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 **Tenant Management Organisation** has passed a resolution to end this Agreement at a duly General Meeting and the Council agrees in writing that it will end on a date agreed by the parties;

20.2.3 if the **Tenant Management Organisation** 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 **Tenant Management Organisation**, 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 **Tenant Management Organisation** by the Council if the **Tenant Management Organisation** has received a **Warning Notice** from the Council under the provisions of clause 19.5, and either:

- i) the **Tenant Management Organisation** 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 **Tenant Management Organisation** has not taken the necessary steps to transfer the relevant functions to the Council under clause 18.1b).

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

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

20.2.8 on the date a **Right to Enfranchise** purchase is completed, if the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation**.

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 **Tenant Management Organisation** 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 8: the payment of service charges and ground rent collected;
- d) Chapter 5, clause 8.3 and 9.2: 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** to carry out its management functions under this Agreement that remain in the **Tenant Management Organisation** accounts (except the surplus account) once creditors have been paid will be returned to the Council within **3** months.
- 20.9 If this Agreement ends the **Tenant Management Organisation** 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 **Tenant Management Organisation** will as soon as is reasonably practicable hand over to the Council any property listed under Paragraph 3 of Schedule 1 which is owned by the Council.

# Chapter 2

## Repairs, Maintenance and Services Provision

*Clause 4.2 of Chapter 1 provides for all of the Council's statutory, contractual and common law obligations to tenants and leaseholders to be unaffected on the coming into force of this Agreement. Accordingly the Council's repairing obligations under, for example, the tenancy agreement or lease, section 4 of the Defective Premises Act 1972, or section 11 of the Landlord and Tenant Act 1985 remain unchanged. This Chapter deals with the exercise by the **Tenant Management Organisation** of **Management Functions** the **Tenant Management Organisation** has agreed to take on from the Council which arise from the Council's repairing obligations to its tenants and leaseholders. The Chapter also deals with the arrangements between the Council and the **Tenant Management Organisation** for **Major Works**, which may extend beyond fulfilment of the Council's repairing obligations to its tenants and leaseholders, and a number of other matters. Note should be made of the protection that Government intends to provide for public sector leaseholders, through a financial cap that limits the liability of such leaseholders whose homes are included in major works programmes that are funded by Government*

### **1 Functions of the Tenant Management Organisation in respect of responsive and planned maintenance repairs**

*(Option A: The **Tenant Management Organisation** exercises no functions in respect of **Responsive and Planned Maintenance Repairs**.) Link to clause 2, Option A.*

1.1 Clause not included.

**Functions of the Tenant Management Organisation in respect of Responsive and Planned Maintenance Repairs** Link to clause 2, Option B.

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

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



- 1.2 Nothing in this clause will impose upon the **Tenant Management Organisation** an obligation to repair, redecorate or maintain:
- 1.2.1 any fixture, fitting or appliance provided by a tenant, leaseholder or freeholder as an alteration or improvement except where the Council would be under an obligation to repair, redecorate or maintain it;
- 1.2.2 any part of a **Property dwelling** or any fixture, fitting or appliance in a **Property dwelling** which is in need of repair or maintenance because of any defect in the design or construction of the **Property dwelling** or the manufacture of any fitting, appliance or component part (unless funds for such repairs have been included in the **Allowances**, see Chapter 5 clause 1); or
- 1.2.3 any part of a **Property dwelling** or any fixture, fitting or appliance which a tenant, leaseholder or freeholder is under an obligation to maintain under his or her tenancy, lease or freehold transfer.
- 1.3 The **Tenant Management Organisation** 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 **Tenant Management Organisation** carrying out the **Responsive** and **Planned Maintenance Repairs** it has agreed to carry out under this clause.
- 1.4 The **Tenant Management Organisation** will carry out repairs that would otherwise be carried out by the Council under Option B, clause 2.1 where the expected cost of those repairs is less than an amount agreed in writing by the Council and the **Tenant Management Organisation**.

## **2 Function of the Council in respect of repairs**

*(Option A: The Council continues to exercise all of its repairing functions.)*

- 2.1 The Council will carry out all repairs to the dwellings that are within its repairing obligations as landlord.

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

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

## **3 Failure to repair**

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

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

#### **4 Major Works: Initiation by the Council**

- 4.1 The Council may draw up proposals for **Major Works** for cyclical redecoration and associated repairs, structural repairs, renewal of components, fixtures or fittings, and improvements to dwellings if it considers them to be necessary or desirable.
- 4.2 If the Council decides that **Major Works** are necessary or desirable the Council will inform the **Tenant Management Organisation** and provide the **Tenant Management Organisation** with details of the Council's proposals.
- 4.3 The **Tenant Management Organisation** will consult with tenants, leaseholders and freeholders over **Major Works** proposals, complying with the requirements under sections 20 and 20ZA of the Landlord and Tenant Act 1985, unless the Council is undertaking consultation under clause 5 of Chapter 4 and clause 15 of Chapter 7. If applicable the **Tenant Management Organisation** will carry out statutory consultation in accordance with clause 15 option B of Chapter 7 and non-statutory consultation in accordance with clause 16 of Chapter 7. In finalising its response, the Tenant Management Organisation will take into account any comments tenants, leaseholders or freeholders may make.
- 4.4 The Council will give proper consideration to the **Tenant Management Organisation's** response to **Major Works** proposals and to any changes which the **Tenant Management Organisation** may suggest. [Link to clause 6.]

## 5 Requests for Major Works by the Tenant Management Organisation

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

## 6 Major Works

*(Option A: The Council carries out **Major Works** but agrees to consult the **Tenant Management Organisation** in relation to them.)*[Link to clause 8.]

- 6.1 If the Council intends to undertake **Major Works**, the Council will consult the **Tenant Management Organisation** about its proposals (including the nature and scope of the works, the proposed contract terms and conditions and the methods by which it intends that the works should be carried out), in accordance with the provisions set out in Schedule 2 (**Procedure for Consultation on Major Works**).

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

- 6.2 At least 28 days before inviting tenders for the proposed **Major Works**, the Council will send to the **Tenant Management Organisation** for approval details of:
- a) the **Major Works** proposed;
  - b) the intended programme for the **Major Works**;
  - c) the access arrangements required for the **Major Works**; and

d) the contractors from whom the Council intends to invite tenders for the **Major Works**; and request the **Tenant Management Organisation** to nominate contractors to be included on the tender list. The Council will not refuse any such nomination without good reason.

6.3 Within 28 days of receiving tenders for the **Major Works** the Council will submit for the **Tenant Management Organisation** approval details of:

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

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

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

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

## 6 Major Works

*(Option B: Council enters into **Major Works** contracts but the **Tenant Management Organisation** agrees to supervise them.) [Link to clause 8.]*

6.1 The Council will include a sufficient sum within the **Allowances** (see Chapter 5, clause 1) for the **Tenant Management Organisation** to supervise agreed **Major Works**. The sum will be included in the **Tenant Management Organisation's Allowances** in the year(s) that the Major Works will take place.

6.2 If the Council intends to undertake **Major Works** the Council will consult the **Tenant Management Organisation** about its proposals including:

- a) the nature and scope of the works;
- b) the proposed contract terms and conditions; and
- c) the methods by which it intends that the works should be carried out.

The Council will give reasoned consideration to any **Tenant Management Organisation** requests for the Council to amend its proposals or to include specific terms and conditions in the contract for the **Major Works**. Where the Council has reason for not complying with such a request, the Council will, as soon as is reasonably practicable, give the **Tenant Management Organisation** a written explanation.

6.3 At least 28 days before inviting tenders for **Major Works** the Council will submit to the **Tenant Management Organisation** for approval details of:

- a) the **Major Works** proposed;
- b) the intended programme for the **Major Works**;
- c) the access arrangements required for the **Major Works**;
- d) the contractors from whom the Council intends to invite tenders for the **Major Works**; and request the **Tenant Management Organisation** to nominate contractors to be included on the tender list. The Council will not unreasonably refuse any such nominations.

6.4 Within 28 days of receiving tenders for **Major Works** the Council will submit for the **Tenant Management Organisation** approval details of:

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

6.5 The Council will not invite tenders or enter into a contract for **Major Works** without the **Tenant Management Organisation** approval and the **Tenant Management Organisation** will not withhold or delay approval without good reason.

6.6 The **Tenant Management Organisation** agrees to supervise **Major Works** contracts entered into by the Council. In fulfilling its supervisory obligations under this clause the **Tenant Management Organisation** will comply with the performance standards for supervising contracts for **Major Works** set out in Schedule 3 (**Procedures and Performance Standards for entering into and supervising Major Works**).

6.7 As soon as the Council has entered into a contract for **Major Works** it will provide the **Tenant Management Organisation** with a copy of the specification and contract for the works and any other information the **Tenant Management Organisation** may require to carry out its supervisory obligations under this clause.

6.8 If, in supervising a **Major Works** contract, it becomes evident that works in addition to those specified in the **Major Works** contract are required the **Tenant Management Organisation** will immediately notify the Council in order that the Council may determine how to deal with the need for additional works. Should the need for additional **Major Works** arise, the **Tenant Management Organisation** will take such

action as the Council may reasonably require including supervising the additional **Major Works** required.

6.9 This clause is subject to the provisions of clause 7, and in a case falling within clause 7 the Council will consult with and involve the **Tenant Management Organisation** throughout all stages leading to a **Partnering Contract** between the Council and a third party for the carrying out of **Major Works which affect the Property**.

## 6 Major works

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

6.1 The **Tenant Management Organisation** agrees to enter into contracts for agreed **Major Works** and supervise such works if the Council has included a sufficient amount within the **Allowances** for the **Tenant Management Organisation** to carry out such works.

6.2 Before carrying out the **Major Works**, the **Tenant Management Organisation** may notify the Council that it considers that the **Allowances** are insufficient to carry out some or all of the **Major Works** for which they have been allocated. The Council will consider any such requests. If the Council proposes to increase the amount of the **Allowances** and the **Tenant Management Organisation** considers that increase to be sufficient, the **Allowances** will be adjusted and the work carried out accordingly. If the Council does not propose to increase the amount of the **Allowances**, or if the **Tenant Management Organisation** does not consider a proposed increase to be sufficient, the **Tenant Management Organisation** will not be under an obligation to carry out those **Major Works**. The **Allowances** will be reduced accordingly and the Council will carry out those works.

6.3 At the time the **Tenant Management Organisation** intends to carry out the **Major Works** listed in Schedule 4 (**The Tenant Management Organisation's Major Works Functions**), the **Tenant Management Organisation** will submit to the Council for approval details of:

- a) the **Major Works** the **Tenant Management Organisation** intends to undertake;
- b) the intended programme for the **Major Works**;
- c) the access arrangements required for the **Major Works**; and
- d) the contractors from whom the **Tenant Management Organisation** intends to invite tenders for the

## Major Works.

6.4 Within 28 days of receiving tenders for the **Major Works**, the **Tenant Management Organisation** will submit to the Council for approval details of:

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

6.5 The **Tenant Management Organisation** will not invite tenders or enter into a contract for **Major Works** without approval from the Council. The Council will not withhold or delay approval without good reason. In fulfilling its obligations under this clause the **Tenant Management Organisation** will comply with the performance standards for entering into and supervising contracts for **Major Works** set out in Schedule 3.

6.6 The Council will only carry out any **Major Works** listed in Schedule 4 in accordance with the provisions of clause 6.2.

6.7 In a case falling within clause 4 (initiation of **Major Works** by the Council), the Council and the **Tenant Management Organisation** may agree that the **Tenant Management Organisation** is to undertake the works and receive the appropriate **Allowances**.

## 6 Major Works

*(Option D: The Council and the **Tenant Management Organisation** agree that more than one of Options A, B and C may be operated concurrently.) Drafting note: Options A, B and C will need to be included in the Agreement under the chosen Option D.*

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

## 7 Partnering contracts made by the council with third parties in respect of major works

7.1 The provisions of clause 6 do not prevent the Council from entering into a **Partnering Contract** for the carrying out of **Major Works** by third parties, and the provisions of that clause do not apply in so far as they are not compatible with the arrangements made by the Council and the third party.

7.2 Where the Council proposes to enter into such a **Partnering Contract** which affects the **Property**, it will consult with and involve the **Tenant Management Organisation** at an early stage and throughout the process and give proper regard to the views of the **Tenant Management Organisation** at all stages.

## 8 Replacement repairs

8.1 Unless a repair is specifically included within Option C of clause 6 or within Option D of that clause, the Council will be under an obligation to replace and renew (whether as

part of a planned maintenance programme or otherwise) all component parts of **Property dwellings** which:

- a) have deteriorated to the extent that repair would be ineffective and uneconomic;
- b) require replacement to ensure the safety of persons using the **Property dwellings**; or
- c) require replacement or renewal as part of the modernisation or improvement of the **Property dwellings**.

8.2 The **Tenant Management Organisation** and the Council will determine whether a case falls within paragraph a) of clause 8.1, in accordance with the procedure set out in Schedule 1.

## 9 Repairs covered by the Council's buildings insurance

*(Option A: The Council makes claims for repairs covered by the Council's buildings insurance policy and carries out such repairs.)*

9.1 The Council will administer all insurance claims for **Insurance Repairs** to the **Property dwellings** which arise from events (such as storm damage, subsidence, fire damage, damage caused by burglary or vandalism and consequential damage caused by flooding, burst or leaking pipes) which are covered by the risks the Council has insured against as set out in clause 7 of Chapter 1.

9.2 The provisions of clause 1 will not apply to **Insurance Repairs** and the Council agrees to carry out all such repairs.

9.3 As soon as practicable after the **Starting Date**, the Council will provide the **Tenant Management Organisation** with a copy of its buildings insurance policy and a simple guide as to the types of repairs that are **Insurance Repairs**, including the action needed to avoid invalidating insurance claims, particularly if a dwelling is void and left vacant for more than one month. The arrangements for undertaking **Insurance Repairs** are set out in Schedule 5 (**Procedure for Repairs Arising from Events Covered by the Council's Building Insurance**).

9.4 As soon as the **Tenant Management Organisation** becomes aware that an **Insurance Repair** to a dwelling is needed, it will notify the Council in writing of that fact.

9.5 If the Council receives a notice from the **Tenant Management Organisation** under clause 9.4 or is otherwise aware that an **Insurance Repair** is needed, the Council will follow the procedure for administering claims, carrying out **Insurance Repairs** and any emergency temporary repairs, as set out in Schedule 5.

9.6 The **Tenant Management Organisation** 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**.



## 9 Repairs covered by the Council's buildings insurance

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

- 9.1 The Council will administer all insurance claims for **Insurance Repairs** to the **Property** which arise from events (such as storm damage, subsidence, fire damage, damage caused by burglary or vandalism and consequential damage caused by flooding, burst or leaking pipes) which are covered by the risks the Council has insured against as set out in clause 7 of Chapter 1.
- 9.2 As soon as practicable after the **Starting Date**, the Council will provide the **Tenant Management Organisation** with a copy of its buildings insurance policy and a simple guide as to the types of repairs that are **Insurance Repairs**, including the action needed to avoid invalidating insurance claims, particularly if a dwelling is void and left vacant for more than one month. The arrangements for undertaking **Insurance Repairs** are set out in Schedule 5.
- 9.3 If the **Tenant Management Organisation** considers that a repair that falls within the list of repairs in Annex A to Schedule 1 is an **Insurance Repair**, the **Tenant Management Organisation** will immediately notify the Council in writing of that fact and follow the procedure for carrying out an **Insurance Repair** set out in Schedule 5.
- 9.4 If the Council receives a notice from the **Tenant Management Organisation** under clause 9.3 or is otherwise aware that an **Insurance Repair** is needed, the Council will follow the procedure for administering claims and carrying out any emergency temporary repairs set out in Schedule 5. Where the **Insurance Repair** is a repair which falls within the list of repairs in Annex B to Schedule 1, the Council will follow the procedure for carrying out **Insurance Repairs** set out in Schedule 5.
- 9.5 The **Tenant Management Organisation** 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**.

## 9 Repairs covered by the Council's buildings insurance

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

- 9.1 The **Tenant Management Organisation** agrees to administer all insurance claims for **Insurance Repairs** to the **Property** which arise from events (such as storm damage, subsidence, fire damage, damage caused by burglary or vandalism and consequential damage caused by flooding, burst or leaking pipes) which are covered by the risks the Council has insured against as set out in clause 7 of Chapter 1.

- 9.2 As soon as practicable after the **Starting Date** the Council will provide the **Tenant Management Organisation** with a copy of its buildings insurance policy and a simple guide of the types of repairs which are classed as **Insurance Repairs**, including the procedures for making claims and the Council's procedure for approving repairs that would be **Insurance Repairs** if the Council had not elected to cover them itself (Chapter 1, clause 7.2). The arrangements for undertaking **Insurance Repairs** are set out in Schedule 5.
- 9.3 If the Council considers that a repair that falls within the list of repairs in Annex B to Schedule 1 is an **Insurance Repair**, the Council will immediately notify the **Tenant Management Organisation** in writing of that fact and follow the procedure for carrying out **Insurance Repairs** set out in Schedule 5.
- 9.4 If the **Tenant Management Organisation** receives a notice from the Council under clause 9.3 or is otherwise aware that an **Insurance Repair** is needed, it will follow the procedure for administering claims and carrying out any emergency temporary repairs set out in Schedule 5. Where the **Insurance Repair** is a repair which falls within the list of repairs in Annex A to Schedule 1, the **Tenant Management Organisation** will follow the procedure for carrying out **Insurance Repairs** set out in Schedule 5.

## 10 Provision of estates services

*(Option A: The **Tenant Management Organisation** does not provide any **Estate Services**)*

10.1 Clause not included.

## 10 Provision of estates services

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

- 10.1 The **Tenant Management Organisation** agrees to provide the **Tenant Management Organisation's Estate Services** listed in Annex A to Schedule 6 (**Functions and Performance Standards of the Tenant Management Organisation and the Council in respect of Estate Services**) and to comply with the performance standards set out in that Schedule.
- 10.2 The **Tenant Management Organisation** will inform the Council in writing if the **Tenant Management Organisation** is unable to provide any of the **Tenant Management Organisation's Estate Services** for seven days or more. The notice will inform the Council of the service the **Tenant Management Organisation** is unable to provide, the period of time for which the service will be unavailable and the reason why the **Tenant Management Organisation** is unable to provide the service. The Council will provide the services the **Tenant Management Organisation** is unable to provide and bill the **Tenant Management Organisation** accordingly.

Service of notice under this clause does not in itself end or alter the **Tenant Management Organisation's** obligation under this Agreement to provide the **Tenant Management Organisation's Estate Services**, but where the Council and the **Tenant Management Organisation** agree that the **Tenant Management Organisation** 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 **Tenant Management Organisation** in accordance with clause 10.1, including the services listed in Annex B to Schedule 6, and to comply with the performance standards set out in that Schedule.

## **11 Technical advice**

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

## **12 Right to improve and leaseholder improvements**

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

12.1 The **Tenant Management Organisation** and Council agree to follow the **Improvements Policy and Procedure** set out in Schedule 7 if the Council or the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** will inform all parties in writing of the reasons for that decision in accordance with the time limits set out in the relevant legislation or, where no time limit is set, as soon as is reasonably practicable.

## **13 Right to repair**

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

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

13.2 The **Tenant Management Organisation** agrees to meet any claims under the **Right to Repair Regulations** for compensation for failure to carry out repairs it has agreed to carry out in accordance with clause 1.

13.3 The Council agrees to meet any claims under the **Right to Repair Regulations** for compensation for failure to carry out repairs it has agreed to carry out in accordance with clause 2.

# Chapter 3

## Rent (including Tenant Service Charges)

### 1 Confidentiality and procedures

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

1.2 The **Arrears Prevention and Control Procedures** are set out in the Schedule 1.

### 2 Rent collection from tenants

*(Option A: The Council collects rents.)*

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

*(Optional clause for **Tenant Management Organisation's** who agree to manage **Rent** arrears but who do not collect **Rent** in accordance with clause 3, Options C to E.)*

2.2 To enable the **Tenant Management Organisation** to control **Rent** arrears (as set out in clause 3) the Council will provide the **Tenant Management Organisation** with a statement of **Rent** for each **Rent** period. This statement will specify the rent due and collected, and the current arrears or advances on each **Rent** account for each tenant. The Council will provide such statements in accordance with the provisions of Schedule 1.

### 2 Rent collection from tenants

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

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

## **2 Rent collection from tenants**

*(Option C: The **Tenant Management Organisation** collects **Rent** and pays it into its own bank account. The **Tenant Management Organisation** also agrees to manage rent arrears.)*

- 2.1 The **Tenant Management Organisation** 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 clause 10 of Chapter 2.

The **Tenant Management Organisation** will keep proper records of **Rents** collected. All **Rent** received will be paid into the **Tenant Management Organisation's** bank account for receiving **Rents** (clause 3 of Chapter 5). All **Rent** will be credited to **Rent** account records within the period specified in Schedule 1.

- 2.3 At least once a month the **Tenant Management Organisation** will for each **Rent** period:
- 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.
- 2.4 The **Tenant Management Organisation** will be entitled to keep any interest earned on the rent in its own account.

## **3 Rent arrears control**

*(Option A: The **Tenant Management Organisation** has no involvement in **Rent** collection or **Rent** arrears management.)*

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

### 3 Rent arrears control

*(Option B: The Council collects **Rents** and consults with the **Tenant Management Organisation** on action proposed in serious arrears cases.)*

3.1 Following consultation in accordance with clause 3.2, the Council will manage **Rent** arrears.

3.2 The Council will consult the **Tenant Management Organisation** before taking any of the following actions to recover **Rent** arrears from any tenant:

- a) serving a Notice Seeking Possession or a Notice to Quit, or notice of any other intended court proceedings;
- b) beginning court proceedings; or
- c) taking steps to enforce a court order.

3.3 In consulting the **Tenant Management Organisation** the Council will provide the **Tenant Management Organisation** with such information about the arrears case as the **Tenant Management Organisation** may reasonably require in order to form a judgement as to:

- a) whether or not the action proposed by the Council is reasonable; and
- b) whether the proposed action is in accordance with the provisions of Schedule 1.

3.4 The Council will give serious consideration to any representations made by the **Tenant Management Organisation** in respect of the action proposed by the Council in any arrears case.

### 3 Rent arrears control

*(Option C: The **Tenant Management Organisation** manages rent arrears, but may request the Council to deal with serious arrears cases.)*

3.1 The **Tenant Management Organisation** will take prompt action to recover any arrears of **Rent** and will seek to prevent arrears becoming serious by managing cases of arrears in accordance with the provisions of Schedule 1.

3.2 If the **Tenant Management Organisation** has, in any particular case of arrears:

- a) exhausted the procedures available to it set out in Schedule 1 and considers that action needs to be taken which the **Tenant Management Organisation** is unable to take, the **Tenant Management Organisation** will hand back the functions of **Rent** collection and arrears control of that case to the Council; or
- b) not exhausted the procedures available to it set out in Schedule 1, it may either:

i) continue to control the arrears in accordance with the provisions of the Schedule; or

ii) hand back to the Council the **Rent** collection and arrears control of that case if the **Tenant Management Organisation** considers that to control arrears, action needs to be taken which would be more effectively taken by the Council.

3.3 The **Tenant Management Organisation** agrees to give the Council at least seven days' written notice of the date that **Rent** will be due on any arrears cases handed back under clause 3.2. The notice will contain the name and address of the tenant in arrears and the amount of the arrears. The **Tenant Management Organisation** also agrees to provide the Council with any information the Council reasonably needs to control the arrears.

3.4 The Council and not the **Tenant Management Organisation** will manage any arrears that accrue after the date the Council takes over the management of the arrears. The Council may take whatever action it considers necessary in accordance with its normal practice to control or recover the arrears. Any money recovered by the Council will be used in the following order of priority:

i) to meet any costs awarded to the Council by a Court in legal action taken to recover the arrears if such costs have not been otherwise recovered;

ii) to pay off arrears which accrued after the **Rent** due date on which the Council took over management of the arrears case in question;

iii) if a balance remains, it is to be deducted from the next rent payment due from the **Tenant Management Organisation** to the Council under clause 9.

3.5 If the Council succeeds in controlling the arrears case handed back under clause 3.2 and all arrears of **Rent** are repaid the Council will return that case to the **Tenant Management Organisation**. The Council will give the **Tenant Management Organisation** at least seven days' written notice of the **Rent** due date from which the **Tenant Management Organisation** will resume collecting **Rent** for the **Rent** account specified in the notice.

3.6 The Council will notify the **Tenant Management Organisation** in writing within seven days if the Council:

a) serves a Notice Seeking Possession or a Notice to Quit, or notice of other intended court proceedings;

b) begins proceedings in a county court; or

c) obtains a court order, and of the terms of such an order.

### **3 Rent arrears control**

*(Option D: The **Tenant Management Organisation** manages **Rent** arrears in accordance with the provisions of Schedule 1, including initiating actions for possession. The Council,*



*unless it exercises discretion not to serve the relevant notice, serves a notice at the request of the **Tenant Management Organisation**. Where the Council exercises its discretion not to serve a notice, the rent waiver clause 12 will apply.)*

3.1 The **Tenant Management Organisation** agrees to take prompt action to recover any arrears of **Rent** and will seek to prevent arrears becoming serious by managing cases of arrears in accordance with the provisions of Schedule 1.

3.2 If the **Tenant Management Organisation** considers that action is needed in any particular arrears case which is not available to it under the provisions of Schedule 1, the **Tenant Management Organisation** will follow the provisions of that Schedule and serve written notice on the Council requesting the Council to:

i) serve a Notice Seeking Possession or a Notice to Quit on the tenant, or notice of other intended Court proceedings; or

ii) begin court proceedings for recovery of rent arrears and possession.

3.3 The **Tenant Management Organisation** will provide the Council with information to show that the **Tenant Management Organisation** has followed the procedure set out in Schedule 1 and to enable the Council to take the action requested by the **Tenant Management Organisation**. The Council will take the action requested within seven days of receiving the **Tenant Management Organisation's** notice unless the Council uses its discretion to suspend action as provided for in clause 3.5.

3.4 The Council will not under the terms of this clause begin court proceedings for **Rent** arrears while this Agreement is in force unless requested to do so by the **Tenant Management Organisation**. If the Council begins court proceedings the Council will, subject to clause 3.5 below, conduct the proceedings in an expeditious manner.

3.5 The Council may at its sole discretion in any case of arrears decide not to serve an appropriate notice or begin or continue with proceedings to gain possession of a dwelling. If the Council exercises this discretion, the **Tenant Management Organisation** will be informed in writing of the decision and the reasons for it. Any **Rent** not collected in such a case will be waived as provided for in clause 12.

3.6 The **Tenant Management Organisation** will pay to the Council any **Rent** which is collected in any case where the Council has not complied with the **Tenant Management Organisation's** request to take action in that arrears case.

### **3 Rent arrears control**

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

3.1 The **Tenant Management Organisation** agrees to take prompt action to recover any **Rent** arrears and to seek to prevent arrears accruing by managing cases of arrears in accordance with the provisions of Schedule 1.

3.2 The Council authorises the **Tenant Management Organisation** to take legal proceedings under this clause where **Rent** arrears have arisen if the **Tenant Management Organisation** is unable to recover arrears in accordance with the provisions of Schedule 1. In taking such action the **Tenant Management Organisation** will act in accordance with the provisions of that Schedule. The **Tenant Management Organisation** will notify the Council in writing within seven days if the **Tenant Management Organisation**:

- a) serves a Notice Seeking Possession or a Notice to Quit, or notice of any other intended court proceedings;
- b) begins court proceedings; or
- c) obtains a court order, and the terms of such an order.

3.3 The **Tenant Management Organisation** will not enforce a court order without the written consent of the Council. The Council will reply within seven days of a request to enforce a court order being received. If the Council refuses consent or gives consent subject to conditions, the Council will have a further seven days to give the **Tenant Management Organisation** written reasons for the refusal or for the conditions imposed.

3.4 If the **Tenant Management Organisation** enforces a court order for possession of any dwelling the **Tenant Management Organisation** will give the Council at least 48 hours' written notice of the date and time at which possession will be obtained.

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

*(Option A: The Council manages rent arrears.)*

4.1 Clause not included

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

*(Option B: The **Tenant Management Organisation** manages rent arrears and collects rent arrears which accrue after the **Starting Date** of this Agreement.)*

4.1 Within 14 days of the **Starting Date** the Council will provide the **Tenant Management Organisation** with a statement of the balance of all **Rent** accounts for all properties (including non domestic properties) for which the **Tenant Management Organisation** has agreed to exercise management functions, identifying all clear **Rent** accounts. The clear **Rent** accounts will include:

- i) the accounts with a nil balance at the **Starting Date**; and
- ii) the accounts with an outstanding balance which amounts to less than two weeks' rent due, at the last rent due date before the **Starting Date**.

4.2 The **Tenant Management Organisation** will take prompt action to recover all rent due in accordance with the provisions of Schedule 1.

4.3 All monies collected by the **Tenant Management Organisation** from a tenant in arrears which accrue after the **Starting Date** will be first used to meet current **Rent** due after the **Starting Date** and then used to reduce any outstanding balance of a rent account mentioned in clause 4.1, until such date as the tenant ceases to be in arrears. The **Tenant Management Organisation** will pay any outstanding balances of rent accounts to the Council in accordance with the procedure and timescale set out in Schedule 1.

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

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

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

4.2 The **Tenant Management Organisation** will take prompt action to recover **Starting Date Arrears** and arrears of **Rents** in accordance with the provisions of Schedule 1.

4.3 All monies collected by the **Tenant Management Organisation** from a tenant in arrears at the **Starting Date** will be first used to meet current **Rent** due after the **Starting Date** and then used to reduce the **Starting Date Arrears**, until the tenant ceases to be in such arrears.

4.4 In addition to the **Rents** collected by the **Tenant Management Organisation** and payable to the Council (see clause 9), the **Tenant Management Organisation** will pay to the Council an agreed proportion of the **Starting Date Arrears** which the **Tenant Management Organisation** can reasonably be expected to collect. The amount will be paid to the Council in quarterly instalments.

#### **5 Former tenants' arrears**

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

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

#### **5 Former tenants' arrears**

*(Option B: The Council manages the collection of the debts of former tenants who ceased to be tenants before the **Starting Date**. The **Tenant Management Organisation** manages the collection of the debts of former tenants who ceased to be tenants after the **Starting Date**.)*

5.1 The Council will manage the collection of debts of former tenants who ceased to be tenants before the **Starting Date**.

- 5.2 The **Tenant Management Organisation** will manage the collection of debts of former tenants who ceased to be tenants after the **Starting Date**.
- 5.3 The **Tenant Management Organisation** will take action, including taking legal proceedings, to recover **Former Tenants' Arrears** in accordance with the provisions of Schedule 1.

## **5 Former tenants' arrears**

*(Option C: The **Tenant Management Organisation** manages the collection of the debts of all former tenants.)*

- 5.1 The **Tenant Management Organisation** will manage the collection of debts of all former tenants.
- 5.2 Within 14 days of the **Starting Date** the Council will provide the **Tenant Management Organisation** with a statement of **Former Tenants' Arrears**. The statement will show the balance of the **Rent** accounts of all former tenants who owed arrears of rent at the **Starting Date**.
- 5.3 The **Tenant Management Organisation** 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 **Tenant Management Organisation** can write off a former tenant's arrears that the **Tenant Management Organisation** 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.

## **5 Former tenants' arrears**

*(Option D: The **Tenant Management Organisation** manages the collection of debts of all former tenants, with an added "buy" option.)*

- 5.1 The **Tenant Management Organisation** will manage the collection of debts of all former tenants.
- 5.2 Within 14 days of the **Starting Date** the Council will provide the **Tenant Management Organisation** with a statement of **Former Tenants' Arrears**. The statement will show the balance of the **Rent** accounts of all former tenants who owed arrears of rent at the **Starting Date**
- 5.3 The **Tenant Management Organisation** will take action to recover **Former Tenants' Arrears** in accordance with the provisions of Schedule 1.
- 5.4 *(Additional option within Option D: The **Tenant Management Organisation** "buys" former tenant debts for an agreed amount, which it pays to the Council in equal quarterly instalments during the first three years of the operation of this Agreement.*

*The **Tenant Management Organisation** follows the procedure set out in Schedule 1 but has the authority to write off former tenant debts if they prove not to be recoverable.*

5.4 In addition to the **Rents** collected by the **Tenant Management Organisation** and payable to the Council under the terms of clause 9, the **Tenant Management Organisation** will also pay to the Council in agreed instalments a sum equal to £ [ ] in respect of the **Former Tenants' Arrears** in lieu of any other liability to the Council for those arrears. If, having followed the procedure for recovering **Former Tenants' Arrears** set out in Schedule 1, the **Tenant Management Organisation** decides that a former tenant's arrears included in **Former Tenants' Arrears** cannot be recovered, the **Tenant Management Organisation** has authority to write off the former tenant's arrears.

## **6 Housing benefit payments**

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

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

6.1 Clause not included.

## **6 Housing benefit payments**

*(Option B: Only use if **Tenant Management Organisation** collects **Rent**.)*

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 **Tenant Management Organisation** with an accurate statement of housing benefit payments payable to tenants or credit each rent account on its IT system to which the **Tenant Management Organisation** has access. If the **Tenant Management Organisation** is using its own systems, on receipt of the statement the **Tenant Management Organisation** will credit housing benefit payments to the relevant tenant's **Rent** account within the period provided for in Schedule 1.

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

## **6 Housing benefits payments**

*(Option C: Only use if **Tenant Management Organisation** collects **Rent**.)*

6.1 Housing benefit payments due to tenants will be paid directly to the **Tenant Management Organisation**. The **Tenant Management Organisation** will credit housing benefit payments to the relevant tenant's **Rent** account within the periods set out in Schedule 1. For each **Rent** period the **Tenant Management Organisation** will provide the Council with the information set out in that Schedule.

6.2 The **Tenant Management Organisation** 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 having regard to Government's guidance on rents for social housing) and in accordance with the Council's Rent Setting Policy..

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

a) the rental value of any improvements to the **Property dwellings** financed by the **Tenant Management Organisation** out of the **Tenant Management Organisation's Surplus Fund**, (see clause 10 of Chapter 5); or

b) any other benefits which have or may come from the management of the **Property dwellings** by the **Tenant Management Organisation**.

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

7.4 The Council will notify the **Tenant Management Organisation** in writing of the **Total Rent** which the Council requires from the **Property Dwellings** for each rental period.

7.5 The Council will set the **Total Rent** by:

a) calculating the core rent and tenant service charge elements which the Council would charge for **Property Dwellings** by comparison with the core rent and tenant service charge elements charged for similar dwellings let on similar terms and conditions (see clause 7.1); and

b) including the tenant service charge required by the **Tenant Management Organisation**, if appropriate, for additional services under clause 7.3.

7.6 The Council will give the **Tenant Management Organisation** a written statement showing how the **Total Rent** has been calculated.

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

## 8 Notification of rent charges

*(Option A: The Council notifies tenants directly and notifies the **Tenant Management Organisation** at the same time.)*

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

## 8 Notification of rent charges

*(Option B: The Council notifies the **Tenant Management Organisation** and the **Tenant Management Organisation** notifies the tenants.)*

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

8.2 The **Tenant Management Organisation** 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

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

9.1 Clause not included.

## 9 Payment to the Council of rent due

*(Option B: The Council will inform the **Tenant Management Organisation** of the level of rent collection expected.) [Only use if clause 2, Option B is chosen.]*

9.1 The **Tenant Management Organisation** will administer the collection of rent as provided for and in the manner set out in clause 2, Option B.

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

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

a) any **Rents** waived under clause 12;

- b) in the first period of each **Financial Year** the **Voids Percentage Amount** for the coming year calculated in accordance with the provisions of clause 10;

*(Option 1: use if clause 3, Option A, B, or E is chosen.)*

- c) clause not included.

*(Option 2: use only if clause 3, Option C is chosen.)*

- d) the **Rents** from tenants whose **Rent** accounts have been handed back to the Council (under clause 3) or **Rent** recovered by the Council;

*Option 3: use only if clause 3, Option D is chosen.)*

- e) the **Rents** due in cases where the **Tenant Management Organisation** has requested that notice be served or action taken (under clause 3) and the Council has not complied with the **Tenant Management Organisation's** request.

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

*(Option C: The Council sends rent demands to the **Tenant Management Organisation**.)*

- 9.1 The **Tenant Management Organisation** agrees to pay **Rents** to the Council as provided for and in the manner set out in this clause.

- 9.2 At the end of March, June, September and December each year the Council will send a rent demand to the **Tenant Management Organisation**. The rent demand will show the **Net Rent** amount due from the **Tenant Management Organisation** for the previous quarter. The **Net Rent** will be calculated as follows:

- 9.2.1 the **Rents** due for each rent period as set by the performance standards less:

- a) any **Rents** waived under clause 12;

- b) in the first quarter of each **Financial Year** the **Voids and bad debts Percentage Amount** for the coming year calculated as provided for in clause 10;

*(Option 1: use if clause 3, Option A, B, or E is chosen.)*

- c) clause not included

*(Option 2: use only if clause 3, Option C is chosen.)*

- d) the **Rents** from tenants whose **Rent** accounts have been handed back to the Council (under clause 3) or **Rent** recovered by the Council.



*(Option 3: use only if clause 3, Option D is chosen.)*

- e) the **Rents** due in cases where the **Tenant Management Organisation** has requested that notice be served or action taken (under clause 3) and them Council has not complied with the **Tenant Management Organisation's** request.

*(Optional clause use only if Chapter 5, clause2, Option C is chosen);*

- f) the **Allowances** for the following quarter (clause 1 of Chapter 5).

9.3 The **Tenant Management Organisation** will pay the **Net Rent** to the Council within 14 days of receipt of the quarterly rent demand. The **Tenant Management Organisation** will be entitled to delay payment of the rent due from any tenant included in the **Net Rent** demand who has made a valid housing benefit claim that has not been processed within twelve weeks of the date in which the claim was submitted to the Council.

9.3.1 Where the **Tenant Management Organisation** exercises the right under clause 9.3 to delay the payment of rent arrears, the **Tenant Management Organisation** will pay to the Council any part of the delayed sum which is not covered by housing benefit. Any payment will be made as soon as the Council notifies the **Tenant Management Organisation** that the housing benefit claim has been processed.

9.4 The Council will pay the **Tenant Management Organisation** any credit shown on the rent demand within one month of the end of the quarter to which the rent demand refers. A credit is payable if the total deductions exceed the total **Rents** payable.

## **10 Voids allowances**

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

10.1 Clause not included.

## **10 Voids allowances**

*(Option B: The **Tenant Management Organisation** manages voids, and/or selects tenants, but does not collect rent and does not manage rent arrears.)*

10.1 The **Voids Losses** budget will be allocated to cover the percentage of **Rent** allowed for rent losses for vacant dwellings during each **Financial Year**.

10.2 Within three months of the end of each **Financial Year** the Council will calculate the actual **Void Losses** of the **Tenant Management Organisation** during the past **Financial Year** and notify the **Tenant Management Organisation**.

10.3 If the **Void Losses** of the **Tenant Management Organisation** are less than the **Voids Percentage Amount**, the difference between the **Void Losses** and the **Voids**

**Percentage Amount** will be paid by the Council to the **Tenant Management Organisation** within one month of the notification under clause 10.2.

- 10.4 If the **Void Losses** for the **Tenant Management Organisation** are greater than the **Voids Percentage Amount**, the difference between the **Void Losses** and the **Voids Percentage Amount** will be paid by the **Tenant Management Organisation** to the Council within one month of the notification under clause 10.2. This payment can be waived under the terms of clause 12.

## **10 Voids allowances**

*(Option C: The **Tenant Management Organisation** collects rent and manages rent arrears and selects tenants)*

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

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

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

- 11.1 Clause not included.

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

*(Option B: The **Tenant Management Organisation** manages rent arrears, and there is provision for write-off of bad debts)*

- 11.1 The Council and the **Tenant Management Organisation** 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**

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

12.1 Clause not included.

## 12 Voids and rents waivers

*(Option B: The **Tenant Management Organisation** manages voids, and/ or selects tenants, collects rent and manages rent arrears.)*

12.1 The **Tenant Management Organisation** will not be liable for any **Void Losses** or loss of rental income which occur for the following reasons:

- a) a dwelling is void and unfit for occupation because of damage by fire or other risks covered by the Council's buildings insurance;
- b) a dwelling is void and unfit for occupation because the Council has failed to comply with its repairing obligations (see Chapter 2);
- c) a dwelling is void because the Council has not complied with the time limits specified in Chapter 6, clause 3, Options B and C;
- d) the **Tenant Management Organisation** has, with the consent of or under instructions from the Council, kept one or more dwellings vacant for major repairs or improvements or for any other reason;
- e) (Sub-clause with three options)

*Use only if clause 3, Option A, B or E is used.)*

- i) Clause omitted.

*Use only if clause 3, Option C is used.)*

- ii) the collection of **Rent Arrears** in a particular case has been handed back to the Council (see clause 3.4);

*Use only if clause 3, Option D is used.)*

- iii) the Council has failed to serve Notice Seeking Possession or Notice to Quit within the time limit set in this Agreement (see clause 3.3) or has exercised its discretion not to serve such a Notice.

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

12.3 The Council will waive:

- a) Void Losses in excess of the Voids Percentage Amount provided for in clause 10; and

b) loss of rental income; if the additional losses have occurred for any of the reasons set out in clause 12.1.

# Chapter 4

## Leaseholder and Freeholder Service Charges

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

### 1 Confidentiality and procedures

- 1.1 The **Tenant Management Organisation** will treat as strictly confidential all information in its possession about **Service Charges** accounts. Only the employees or officers of the **Tenant Management Organisation** 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 **Tenant Management Organisation** which has overall oversight of the management of **Service Charges** accounts, or to a general meeting of the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** and the Council have agreed under clause 3, Option B, that the **Tenant Management Organisation** will calculate **Service Charges**, send out **Service Charge** demands and collect **Service Charges**, the **Tenant Management Organisation** will treat the obligations of the Council under sections 21 of the Landlord and Tenant Act 1985 (regular statements of account) and section 22 of that Act (inspection etc. of documents) as its obligations, and act accordingly.

### 3 Service charges: calculation, sending of demands and collection

(**Option A:** The Council calculates all the **service charges** (including where appropriate ground rents), sends service charge demands to leaseholders and freeholders and collects service charges.)

3.1 The Council will:

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

3.2 The **Tenant Management Organisation** will maintain its records and accounts books in such a way as will enable the Council to comply with its obligations under section 22 of the Landlord and Tenant Act 1985 (inspection etc. of documents) and for it to calculate **Service Charges** for services provided by the **Tenant Management Organisation**.

3.3 The Council and the **Tenant Management Organisation** will each ensure that all invoices and credit notes relating to the services provided by it have proper records and audit trails and comply with the provisions of the Schedule.

3.4 The Council will calculate the **Service Charges** within the periods set out in the Schedule, and provide the **Tenant Management Organisation** 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.

### **3 Service charges: calculation, sending of demands and collection**

(**Option B:** The **Tenant Management Organisation** calculates all the **service charges** (including where appropriate ground rents), sends service charge demands to leaseholders and freeholders and collects **Service Charges**.)

3.1 The **Tenant Management Organisation** will:

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

3.2 The Council will maintain its records and accounts books in such a way as will enable the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** 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.

### **3 Service charges: calculation, sending of demands and collection**

(**Option C:** The Council calculates all the **Service Charges** (including where appropriate ground rents), sends service charge demands to leaseholders and freeholds and the **Tenant Management Organisation** collects service charges and ground rents).

3.1 The Council will:

a) calculate all **Service Charges** for the services provided to the leaseholder and freeholder dwellings, set out in accordance with the provisions of the lease or transfer;

b) send service charge demands.

3.2 The **Tenant Management Organisation** will collect the **Service Charges** and ground rents due and pay the amounts collected to the Council in accordance with the arrangements set out in the Schedule to this chapter.

3.3 The **Tenant Management Organisation** will maintain its records and accounts books in such a way as to enable the Council 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 **Tenant Management Organisation**.

3.4 The Council and the **Tenant Management Organisation** 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.

### **4 Service charges and ground rent arrears**

(**Option A:** The Council manages all **Service Charge** and **Ground Rent** arrears.)

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

(**Option B:** The Tenant Management Organisation manages **Service Charge** and possibly **Ground Rent** arrears as set out in the schedule.)

4.1 The **Tenant Management Organisation** will manage **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.

4.2 The **Tenant Management Organisation** 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.

## **5 Consultation provisions under the Landlord and Tenant Act 1985 (as amended) relating to service charges where both the Council and the Tenant Management Organisation provide services**

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

5.1 Both the Council and the **Tenant Management Organisation** provide services, but the parties agree that it is the Council that will comply with the consultation requirements.

## **5 Consultation provisions under the Landlord and Tenant Act 1985 (as amended) relating to service charges where both the Council and the Tenant Management Organisation provide services**

*(Option B: Both the Council and the **Tenant Management Organisation** provide services, but it is the **Tenant Management Organisation** that complies with the consultation requirements.)*

5.1 Both the Council and the **Tenant Management Organisation** provide services, but the parties agree that it is the **Tenant Management Organisation** that will comply with the consultation requirements.

## **5 Consultation provisions under the Landlord and Tenant Act 1985 (as amended) relating to service charges where both the Council and the Tenant Management Organisation provide services**

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

5.1 Both the Council and the **Tenant Management Organisation** provide services, and the parties agree that the **consultation requirements** will be complied with by each party in relation to services provided by that party.

## **6 Supplementary provisions in relation to clause 5**

6.1 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 **Tenant Management Organisation** 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.

## **7 Other provisions of the Landlord and tenant Act 1985 relating to other service charges**

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

7.1 The Council will supply regular statements of account to tenants and leaseholders under section 21 of the Landlord and Tenant Act 1985, and notices to accompany demands for **Service Charges** under section 21B of that Act in accordance with the provisions of those sections and of the regulations made under them.

7.2 The **Tenant Management Organisation** will provide information in its possession to the Council that is required by the Council to enable it comply with the provisions of clause 7.1.

## **7 Other provisions of the Landlord and tenant Act 1985 relating to other service charges**

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

7.1 The **Tenant Management Organisation** 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.

7.2 The Council will provide information in its possession to the **Tenant Management Organisation** that is required by the **Tenant Management Organisation** to enable it to comply with the provisions of clause 7.1.

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

8.1 Clause not included.

## **8 Payment of service charges and/or ground rent to the Council**

*(Option B: The **Tenant Management Organisation** collects all service charges and /or ground rents, and may collect arrears).*

8.1 The **Tenant Management Organisation** will pay to the Council the **Service Charges** and **Ground Rent** it has collected, within the periods set out in the Schedule.

## **8 Payment of service charges and/or ground rent to the Council**

*(Option C: The **Tenant Management Organisation** collects service charge arrears as set out in the schedule).*

8.1 The **Tenant Management Organisation** will pay to the Council the Service Charges arrears it has collected in accordance with the arrangements set out in the Schedule.

## **9 Financial incentives and penalties in relation to collection of service charge arrears**

9.1 Where the **Tenant Management Organisation** manages service charge arrears, the Council and the **Tenant Management Organisation** agree that the financial incentive and penalty scheme set out in the Schedule will operate.

# Chapter 5

## Financial Management

### 1 Calculation of allowances

- 1.1 The **Allowances** to be paid by the Council to the **Tenant Management Organisation** (whether directly or indirectly) under clause 2 are to be the aggregate of:
- a) the sums calculated in accordance with the method of calculation set out in the statutory guidance given by the Secretary of State set out in **Right to Manage Guidance: Calculating Allowances for Tenant Management Organisations**, [2012] utilising such data as are relevant for the purposes of the calculation; and
  - b) the amount (if any) for additional services included at the **Tenant Management Organisation's** request in the **Rent** or **Service Charge** (see Chapter 3, clause 7 and Chapter 4, clause 3).
- 1.2 The amounts calculated in accordance with paragraph (a) of clause 1.1 and included under paragraph (b) of clause 1.1 are set out in Schedule 1 (**Calculation and Payment of Allowances**). These amounts will be adjusted annually in accordance with the statutory guidance given by the Secretary of State in **Right to Manage Guidance: Calculating Allowances for Tenant Management Organisations** [2012].
- 1.3 The Council will give the **Tenant Management Organisation** at least three' months' notice of the proposed change in the amount falling within paragraph (a) of clause 1.1 for the following financial year. Any change in the **Allowances** will come into effect from the beginning of the following **Financial Year** and will be implemented over such period as may be agreed by the **Tenant Management Organisation** in accordance with the provisions of Schedule 1.
- 1.4 At least two months before the beginning of each **Financial Year** the **Tenant Management Organisation** will in writing inform the Council of the **Allowance** it calculates it requires falling within paragraph (b) of clause 1.1 for the coming **Financial Year**. The **Tenant Management Organisation** will state the reasons for any increase or decrease in the amount it calculates it requires compared with the corresponding amount for the previous **Financial Year**.
- 1.5 Either party may seek a review of the **Allowances** being paid in accordance with clause 1.1 and the provisions of Schedule 1 and such a review will be conducted in accordance with the Guidance Calculating Allowances for **Tenant Management Organisations**. 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 **Tenant Management Organisation** and the Council in accordance with the provisions of Schedule 1.

## 2 Payment of allowances

*(Option A: The Council does not directly pay the **Allowances** to the **Tenant Management Organisation**.)*

2.1 The Council will pay all of the **Management and Maintenance Costs** arising from the exercise by the **Tenant Management Organisation** of its management functions under this Agreement.

## 2 Payment of allowances

*(Option B: The **Allowances** are paid to the **Tenant Management Organisation**.)*

2.1 The Council will pay the **Tenant Management Organisation** the **Allowances** in instalments in advance in accordance with the agreement between the parties as to **Financial Procedures** set out in Schedule 2.

2.2 Where this Agreement ends in the course of a **Financial Year**, the **Allowances** payable in respect of the period from the start of that **Financial Year** to the date this Agreement ends shall be the **Allowances** payable in respect of that **Financial Year** multiplied by  $x/365$  (or, in the case of a leap year,  $x/366$ ), where  $x$  is the number of days from the start of that **Financial Year** to the last day this Agreement is in force.

2.3 Value Added Tax at the standard rate shall be charged to the Council on the **Allowances** payable to the **Tenant Management Organisation** under this Agreement.

## 2 Payment of allowances

*(Option C: The **Tenant Management Organisation** retains **Allowances** from **Rents** and **Service Charges** collected by it.)*

2.1 The **Tenant Management Organisation** will at the end of each quarter deduct the following quarter's **Allowance** from the **Rents** (clause 9 of Chapter 3) and **Service Charges** (clause 8 of Chapter 4) payable to the Council.

2.2 If the **Rents** and **Service Charges** payable to the Council are insufficient to cover the **Allowances**, the balance will be paid to the **Tenant Management Organisation** in accordance with the provisions of clause 9 of Chapter 3.

2.3 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.

2.4 Value Added Tax at the standard rate shall be charged to the Council on the **Allowances** payable to the **Tenant Management Organisation** under this Agreement.

## 2 Payment of allowances

*(Option D: The **Tenant Management Organisation** has entered a self financing agreement with the Council and will not receive allowances.*

2.1 The **Tenant Management Organisation** will retain the income from rent and service charges for the management, maintenance and improvement of the Property. The **Tenant Management Organisation** will pay to the Council, in accordance with schedule 1 Self Financial arrangements:

- (a) the **Tenant Management Organisation's** contribution towards interest payments on the Council's housing debt and, where appropriate, towards reducing the debt;
- (b) the cost of council services provided to the **Tenant Management Organisation** and/ or to the Property.

## 3 Payment of management and maintenance costs and administrative expenses incurred by the Tenant Management Organisation

*(Option A: **Tenant Management Organisation** has a management and maintenance budget within the Council's Housing Revenue Account. Payment for costs incurred is made by the Council.)*

3.1 The **Tenant Management Organisation** is authorised to incur **Management and Maintenance Costs** in the exercise of its **Management Functions** under this Agreement providing that total costs incurred do not exceed the **Allowances**. The **Tenant Management Organisation** will act in accordance with the provisions of Schedule 2 for all payments of **Management and Maintenance Costs** and the administrative expenses mentioned in clause 3.2.

3.2 The Council will provide the **Tenant Management Organisation** with the **Committee and communication allowance** for the **Tenant Management Organisation's** administrative expenses. The **Tenant Management Organisation** is authorised to meet the following expenses:

- a) costs of arranging and holding meetings of the **Tenant Management Organisation** (including crèche provision);
- b) travel costs of the Committee and members on the **Tenant Management Organisation's** business;
- c) minor administrative expenses such as postage, communications and reimbursement to members of the Committee for phone calls made on behalf of the **Tenant Management Organisation**;
- d) members' costs in attending training courses and conferences approved by the **Tenant Management Organisation**;

e) any other reasonable costs of the **Tenant Management Organisation** in administering its affairs or in using its **Surplus Fund** (see clause 10) for any purpose permitted by the **Tenant Management Organisation's** constitution.

The **Tenant Management Organisation** will act in accordance with the provisions of Schedule 2 when authorising spending from the **Committee and communications allowance**.

3.3 The Council agrees to pay costs properly incurred under this Agreement to third parties.

### **3 Payment of management and maintenance costs and administrative expenses incurred by the Tenant Management Organisation**

*(Option B: Tenant Management Organisation has its own bank account and receives Allowances from the Council, or retains allowances from rental income or has agreed a self financing arrangement*

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

### **4 The Tenant Management Organisation's banking arrangements**

*(Option A: Simple arrangements because Council pays all costs other than the Tenant Management Organisation's administrative expenses.) [Link: must be used with clause 2 Option A and clause 3 Option A.]*

4.1 The **Committee and communication allowance** provided by the Council (clause 3) will be put into a bank or building society account of the **Tenant Management Organisation's** choice and used to meet administrative expenses as set out in clause 3.2.

4.2 The **Tenant Management Organisation** will notify the Council in writing of any bank or building society accounts it opens.

4.3 The **Tenant Management Organisation** will inform the Council in writing of the names and addresses of the 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 **Tenant Management Organisation's** account will require a minimum of two signatories.

### **4 The Tenant Management Organisation's banking arrangements**

*(Option B: Tenant Management Organisation has such accounts as it sees fit, and notifies Council of account details.)*

- 4.1 The **Tenant Management Organisation** will open any bank or building society accounts as it considers necessary. The **Tenant Management Organisation** will inform the Council of any bank or building society accounts it opens.
- 4.2 The **Tenant Management Organisation** 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 **Tenant Management Organisation's** account will require a minimum of two signatories.
- 4.3 The **Tenant Management Organisation** will notify the Council in writing of the account name and number into which the Council is to pay the **Allowances**.

*(Optional Clause if Chapter 2, clause 6, Option C or D is chosen.)*

- 4.4 If the **Allowances** include an amount to meet the costs of **Major Works**, the **Tenant Management Organisation** and the Council will agree the arrangements for the major works payment and set these out in Schedule 1 (Calculations and payment of allowances). This may include payments to the **Tenant Management Organisation** as and when the works are due, payments included within the **Tenant Management Organisation** allowances, annualised payments into a joint major works account or any other arrangement that both parties agree.
- 4.5 If the **Tenant Management Organisation** decides not to carry out certain **Major Works** under Option C clause 6.2 of Chapter 2, the **Tenant Management Organisation** agrees to pay back the sums held in the **Major Works Account** which were paid to the **Tenant Management Organisation** to carry out those works if it is requested to do so by the Council.

## **5 Financial control and accounting standards**

- 5.1 The **Tenant Management Organisation** will conduct its financial affairs in accordance with the provisions set out in Schedule 2.
- 5.2 The **Tenant Management Organisation** will account for income and expenditure in accordance with the accounting standards set out in Schedule 3 (**Accounts and Audit**).
- 5.3 The **Tenant Management Organisation** will provide the Council with the following financial information:
- a) the **Tenant Management Organisation's** budget for the coming **Financial Year** before the beginning of each **Financial Year**;
  - b) the **Tenant Management Organisation's** quarterly revenue report within six weeks of the end of each quarter;
  - c) the **Tenant Management Organisation's** accounts and balance sheet for the previous **Financial Year** audited by a qualified auditor within six months of the end of each **Financial Year**;



d) the **Tenant Management Organisation's** auditor's management letter within one month of receipt; and

e) information on leaseholder charges, in accordance with the provisions of the Schedule to chapter 4 as to how the information is to be provided and within which period it is to be provided.

5.4 The **Tenant Management Organisation's** correspondence, files, books and records of accounts that relate to the management of the **Property** dwellings and the **Tenant Management Organisation'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

*[Tenant Management Organisation's financial year should be the same as the Council financial year.]*

6.1 The **Tenant Management Organisation's Financial Year** will be from 1st April to 31st March of the following year.

## 7 Restriction on Investments

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

## 8 Reserve funds

*(Option A: No clause needed because Council meets costs at the direction of the **Tenant Management Organisation**.)*

8.1 Clause not included.

## 8 Reserve funds

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

8.1 The **Tenant Management Organisation** will set up a **Reserve Fund** to meet the following potential liabilities:

a) anticipated costs in future years resulting from under-spending on repairs and services;

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

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

8.2 The **Reserve Fund** will be used to meet costs in enabling the **Tenant Management Organisation** to exercise its **Management Functions** under this Agreement in relation to the potential liabilities mentioned in clause 8.1.

8.3 If a credit balance remains in the **Reserve Fund** when this Agreement ends the balance will be paid over to the Council.

## **9 Major works account**

*(Option A: The **Tenant Management Organisation** has no **Major Works** account.)*

9.1 Clause not included.

## **9 Major works account**

*(Option B: The **Tenant Management Organisation** has a **Major Works** account.)*

9.1 The **Tenant Management Organisation** will set up a **Major Works Account**, which will be shown on the **Tenant Management Organisation's** balance sheet at the end of each **Financial Year**. The amount included in the **Allowances** to meet the costs of **Major Works** (Chapter 2, clause 6) will be deposited in the **Major Works Account**.

9.2 If a credit balance remains in the **Major Works Account** when this Agreement ends the balance will be paid over to the Council.

## **10 Financial report and surplus fund**

*(Option A: Management and maintenance costs are paid by the Council. The Council holds the **Surplus Fund**.)*

10.1 The Council will keep an accurate account of the money paid out at the direction of the **Tenant Management Organisation**.

10.2 The Council will produce a **Financial Report** that shows:

- a) a comparison of the costs paid at the direction of the **Tenant Management Organisation** and of the **Allowances**;
- b) provision for any other liabilities incurred by the **Tenant Management Organisation**; and

c) the **Surplus Fund** provided for in this clause.

10.3 The Council will produce a **Financial Report** for each **Financial Year** and send a copy to the **Tenant Management Organisation** within six months of the end of the **Financial Year**. If the **Financial Report** shows a surplus the Council will hold the **Surplus Fund** for the benefit of the **Tenant Management Organisation**.

10.4 The **Surplus Fund** may be used by the **Tenant Management Organisation** for any purpose permitted by the **Tenant Management Organisation's** constitution.

10.5 Any **Surplus Fund** balance will be carried forward from one **Financial Year** to the next.

10.6 If this Agreement ends the Council will produce a **Financial Report** up to the date on which this Agreement ended. A copy of the **Financial Report** will be sent to the **Tenant Management Organisation** within three months of the Agreement ending.

10.7 If a **Surplus Fund** balance remains when this Agreement ends the **Surplus Fund** will be used as the **Tenant Management Organisation** directs. The balance in the **Surplus Fund** can be used by the **Tenant Management Organisation** for any purpose permitted by the **Tenant Management Organisation's** constitution.

10.8 The **Tenant Management Organisation** 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 **Tenant Management Organisation** is wound up or dissolved, any of the **Surplus Fund** remaining after satisfaction of all the **Tenant Management Organisation's** debts and liabilities will be disposed of in accordance with the **Tenant Management Organisation's** constitution. The **Tenant Management Organisation** will inform the Council of the decision.

## **10 Financial report and surplus fund**

*(Option B: Management and maintenance costs are paid by the **Tenant Management Organisation**.)*

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

a) a statement of the **Tenant Management Organisation's** income and expenditure;

b) the assets and liabilities of the **Tenant Management Organisation**, other than items included under paragraph a);

c) the **Major Works Account** (if any);

d) the **Reserve Fund** (if any); and

e) the **Surplus Fund** provided for in this clause.

10.2 If the **Annual Accounts** show a surplus of assets over liabilities, the balance will be transferred to the **Surplus Fund** or the **Reserve Fund**, and the **Tenant Management Organisation** will report on the **Surplus Fund** at its Annual General Meeting. The **Surplus Fund** will be shown on the **Tenant Management Organisation's** balance sheet.

10.3 The **Surplus Fund** may be used by the **Tenant Management Organisation** for any purpose permitted by the **Tenant Management Organisation'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 **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** directs. The balance in the **Surplus Fund** can be used by the **Tenant Management Organisation** for any purpose permitted by the **Tenant Management Organisation's** constitution.

10.8 The **Tenant Management Organisation** 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 **Tenant Management Organisation** is wound up or dissolved, any of the **Surplus Fund** remaining after satisfaction of all the **Tenant Management Organisation's** debts and liabilities will be disposed of in accordance with the **Tenant Management Organisation's** constitution. The **Tenant Management Organisation** will inform the Council of the decision.

## **11 Loans to the Tenant Management Organisation**

11.1 The Council may provide the **Tenant Management Organisation** a loan or an overdraft guarantee.

11.2 If the Council refuses a request from the **Tenant Management Organisation** for assistance under this clause the Council will give the **Tenant Management Organisation** written reasons for refusing the **Tenant Management Organisation's** request.

## 12 Interest on late payments

*(Option A: The Council retains the **Allowances** and the **Tenant Management Organisation** does not collect rent.)*

12.1 Clause not included.

## 12 Interest on late payments

*(Option B: The **Tenant Management Organisation** and the Council agree to pay interest on late payments.)*

12.1 The **Tenant Management Organisation** agrees to pay interest on any late payment due to the Council under this Agreement. Interest will be paid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, as amended, 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** at the date the payment from the Council was due. Interest will be paid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, as amended, from the date on which the payment was due to the date on which the **Tenant Management Organisation** receives the payment.

## 13 Set off of payments

*(Option A: The Council retains the **Allowances** and the **Tenant Management Organisation** does not collect rent.)*

13.1 Clause not included.

## 13 Set off of payments

*(Option B: The Council and the **Tenant Management Organisation** are entitled to deduct money owed from payments due.)*

13.1 If any payment under this Agreement due from the **Tenant Management Organisation** 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 **Tenant Management Organisation**.

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

# Chapter 6

## Tenancy Management

### 1 Information to housing applicants and/or new tenants

- 1.1 The Council will provide information about **Tenant Management Organisations** in its literature.
- 1.2 The **Tenant Management Organisation** will provide the Council with an information leaflet about what it is and what it does.
- 1.3 The Council will give housing applicants the opportunity to state if they would like to be housed in a **Property dwelling**.
- 1.4 The procedure for introductory meetings for applicants including at accompanied viewings of dwellings is set out in Schedule 1 (**Introductory Meetings for Housing Applicants and/or New Tenants**). The procedure for introductory meetings with new tenants is also set out in Schedule 1.

### 2 Consultation between the Tenant Management Organisation and the Council

- 2.1 The Council will consult with the **Tenant Management Organisation** before adopting or altering its allocation scheme under section 167 of the Housing Act 1996.
- 2.2 The **Tenant Management Organisation** 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 **Tenant Management Organisation** under clause 2.2.
- 2.4 The **Tenant Management Organisation** will consult with the Council in respect of any application falling under clauses 13 to 19 that requires the resolution of complex issues of law or fact.
- 2.5 The **Tenant Management Organisation** may, if the Council so requests, monitor the operation of a **Local Lettings Policy** as it relates to the **Property dwellings**, and where the **Tenant Management Organisation** does carry out such monitoring, it will keep the Council informed of its findings.
- 2.6 The **Tenant Management Organisation** 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 **Tenant Management Organisation** to liaise with local partners dealing with crime reduction matters, to ensure that the manner in which the **Tenant Management Organisation** performs its functions under this Agreement links with local action to address crime and disorder. To here

### **.3 Selection of tenants of vacant property dwellings**

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

- 3.1 The Council will select the tenant of a vacant **Property dwelling** in accordance with its published allocation scheme, or transfer policy where relevant, with no involvement on the part of the **Tenant Management Organisation**.
- 3.2 Where a person has been selected as a tenant of a vacant **Property dwelling**, either the Council or the **Tenant Management Organisation** will carry out all the necessary administrative procedures prior to the grant of the tenancy in accordance with the provisions of Schedule 2 (**Selection of Tenants Policy and Procedure**).
- 3.3 The length of the tenancy and the succession rights applicable will be determined by the Council in line with its Tenancy Policy.
- 3.4 The tenancy granted by the Council will be in the form of the **Tenancy Agreement** set out in Annex A to this Chapter.

### **3 Selection of tenants of vacant property dwellings**

*(Option B: The **Tenant Management Organisation** selects tenants of vacant **Property dwellings** from a list of eligible potential tenants supplied by the Council.)*

- 3.1 The **Tenant Management Organisation** will allocate vacant **Property dwellings** in accordance with the Council's published allocation scheme and in accordance with the following provisions of this clause and the provisions of Schedule 2.
- 3.2 Where the Council is satisfied that more than one person meets the criteria for selection as a tenant of a vacant **Property dwelling**, the Council will provide the **Tenant Management Organisation** with a list of those persons and such information about them as it regards as relevant and request the **Tenant Management Organisation** to select one of them to be the tenant of the vacant **Property dwelling**.
- 3.3 The Tenant Management Organisation will select the tenant from this list following a process agreed with the Council in accordance with the provisions of schedule 2.
- 3.4 Where the **Tenant Management Organisation** is of the opinion that none of the persons in the list should be so listed, it may make representations in writing to that effect to the council as soon as is reasonably practical after it has been provided with



the list. The council undertakes to give serious consideration to those representations and will inform the **Tenant Management Organisation** in writing of its decision as soon as is reasonably practicable.

- 3.5 Where a person has been selected as a tenant of a vacant **Property dwelling**, the **Tenant Management Organisation** is authorised to carry out all the necessary administrative procedures prior to the grant of the tenancy in accordance with the provisions of Schedule 2.
- 3.6 The length of the tenancy and the succession rights applicable will be determined by the Council in line with its Tenancy Policy.
- 3.7 The Council will allocate the property based on the **Tenant Management Organisation's** decision as to who should be selected as a tenant of a vacant property unless it is satisfied that there are exceptional circumstances which make it inappropriate for it to do so. Where the Council is satisfied that there are such exceptional circumstances, it will explain the reasons for rejecting the **Tenant Management Organisation's** decision in writing as soon as is reasonably practical.
- 3.8 The Council may, where it is satisfied that a person has exceptionally urgent housing needs, allocate a specific vacant property to that person, notwithstanding that it has already provided a list of persons to the **Tenant Management Organisation** under clause 3.2.
- 3.9 Where the Council has made an allocation in accordance with the provisions of clause 3.8 it will, no later than two working days after its decision to make the allocation, give reasons in writing for its decision to the **Tenant Management Organisation**.
- 3.10 Where a case falls within clause 3.8 this Option is terminated and Option A will come into effect:
- a) clause 3.5 will not apply and the Council will carry out all the necessary administrative procedures prior to the grant of the tenancy; and
  - b) the provisions of clause 18 of Chapter 7 will not apply.
- 3.11 The Council will make arrangements for the selection process to be monitored. The monitoring may, if the Council so decides involve the presence of a representative of the Council as an observer on any interview panel. The monitoring will be carried out in accordance with the provisions of Schedule 2.
- 3.12 If the Council is satisfied that the **Tenant Management Organisation** is not selecting tenants of vacant **Property dwellings** in a fair and proper manner, it will request the **Tenant Management Organisation** in writing to make appropriate changes to its selection procedures within such reasonable period as the Council specifies, and in accordance with the provisions of Schedule 2.
- 3.13 If, after the period specified by the Council under clause 3.12 has expired, the Council is satisfied that the **Tenant Management Organisation** is still not selecting tenants in a fair and proper manner, it may, in accordance with the provisions of Schedule 2,

terminate this Option on giving seven days' notice in writing to the **Tenant Management Organisation**.

3.14 Where this Option is terminated under clause 3.13, Option A will come into effect.

### **3 Selection of tenants of vacant property dwellings**

*(Option C: There is a Local Lettings Policy, setting out local lettings priorities for the **Tenant Management Organisation** area, and the **Tenant Management Organisation** assists the council with the assessment of applications and selects tenants of vacant Property dwellings in accordance with that policy.)*

3.1 Where the Council has introduced a Local Lettings Policy which applies to the **Tenant Management Organisation** Property as part of its allocation scheme, the **Tenant Management Organisation** will, to the extent agreed with the council, assist the council to assess potential tenants in relation to their qualification for an allocation of accommodation, and will select tenants of vacant Property dwellings in accordance with that Policy.

3.2 Where a person has been selected as a tenant of a vacant Property dwelling, the **Tenant Management Organisation** is authorised to carry out all the necessary administrative procedures prior to the grant of the tenancy in accordance with the provisions of Schedule 2.

3.3 The length of the tenancy and the succession rights applicable will be determined by the Council in line with its Tenancy Policy.

3.4 The Council may, where it is satisfied that a person has exceptionally urgent housing needs, allocate a specific vacant property dwelling to that person, notwithstanding that the **Tenant Management Organisation** has already selected another person as a tenant of that dwelling, provided that the person selected by the **Tenant Management Organisation** has not yet been notified of their selection.

3.5 Where the Council has made an allocation in accordance with the provisions of clause 3.4, it will, no later than two working days after its decision to make the allocation, give reasons in writing for its decision to the **Tenant Management Organisation**.

3.6 Where a case falls within clause 3.4 this Option is terminated and Option A will come into effect:

a) clause 3.2 will not apply and the Council will carry out all the necessary administrative procedures prior to the grant of the tenancy; and

b) the provisions of clause 18 of Chapter 7 will not apply.

3.7 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 the provisions of Schedule 2.

- 3.8 If the Council is satisfied that the **Tenant Management Organisation** is not selecting tenants of vacant Property dwellings in a fair and proper manner, it will request the **Tenant Management Organisation** in writing to make appropriate changes to its selection procedures within such reasonable period as the Council specifies, and in accordance with the provisions of Schedule 2.
- 3.9 If, after the period specified by the Council under clause 3.8 has expired, the Council is satisfied that the **Tenant Management Organisation** is still not selecting tenants in a fair and proper manner, it may, in accordance with the provisions of Schedule 2, terminate this Option on giving seven days' notice in writing to the **Tenant Management Organisation**.
- 3.10 Where this Option is terminated under clause 3.8, either Option A of Clause 3 will come into effect.

### 3 Selection of tenants of vacant property dwellings

*(Option D: Where a mixture of Option A, B and /or C apply. For instance there is a Local Lettings Policy for part of the **Tenant Management Organisation** area, for or a type of property in the **Tenant Management Organisation** area or for a type of allocation (such as area transfers) but option A or B applies to other lettings. In this case the relevant options must be included in the Agreement UNDER Option D.*

- 3.1 The Council and the **Tenant Management Organisation** agree that more than one of the Options A, B and C of this clause may be operated concurrently in respect of the selection of tenants of vacant property dwellings, and the provisions of the relevant Option clause shall apply in respect of the relevant property and/or letting.

### 4 Transfers

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

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

### 4 Transfers

*(Option B: The **Tenant Management Organisation** administers all applications for transfer.)*

- 4.1 Where a tenant of a **Property dwelling** applies for a transfer to another dwelling, whether or not that dwelling is one which is within the scope of this Agreement, the **Tenant Management Organisation** 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.

## 4 Transfers

*(Option C: Administration of transfer applications is decided on a case by case basis.)*

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

## 5 Introductory tenancies

*(Option A: The Council does not have **Introductory Tenancies**.)*

- 5.1 Clause not included.

## 5 Introductory tenancies

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

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

## 5 Introductory tenancies

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

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

## 6 Variations to the tenancy agreement

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

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

6.4 If the Council serves a **Tenancy Variation Notice** on the **Tenant Management Organisation**, the **Tenant Management Organisation** 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 **Tenant Management Organisation's** views before serving the preliminary notice of variation of tenancy on secure tenants.

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

## **6 Variations to the tenancy agreement**

*(Option B: Variations to the terms of a tenancy may be initiated by the Council or the Tenant Management Organisation.)*

6.1 The Council or the **Tenant Management Organisation** 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 **Tenant Management Organisation** the Council will within 28 days of receipt of the notice:

a) consent in writing to the changes proposed by the **Tenant Management Organisation**;

b) amend the **Tenant Management Organisation's** proposed changes, giving written reasons for the amendments, and consent in writing to the amended changes; or

c) inform the **Tenant Management Organisation** 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 **Tenant Management Organisation**, the **Tenant Management Organisation** 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 **Tenant Management Organisation'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 **Tenant Management Organisation** proposes changes and the Council has consented to those changes, the **Tenant Management Organisation** 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 **Tenant Management Organisation** has proposed changes, the majority of secure tenants do not wish for the **Tenant Management Organisation** to represent them during the consultation process under section 103 of the Housing Act 1985, the secure tenants may choose another body to represent them during that consultation process.

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

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

*(Option A: The Council deals with all reports and investigations into breaches of tenancy)*

7.1 Clause not included.

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

*(Option B: The Council serves notices at the **Tenant Management Organisation's** request, but has discretion not to serve notices.)*

7.1 In carrying out its housing management functions under this Agreement, the **Tenant Management Organisation** will adopt recommended good practice, having regard to guidance published by the relevant authorities and the Chartered Institute of Housing

7.2 If the **Tenant Management Organisation** 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 on the freehold transfer, the **Tenant Management Organisation** may serve a written **Notice of Breach** on the Council requesting the Council to serve a notice or take such other action as the **Tenant Management Organisation** considers appropriate in accordance with the provisions of Schedule 5 (**Breach of tenancy agreement, term of a lease, or covenant in a freehold transfer**).

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

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

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

- a) serve the notice or take the action requested by the **Tenant Management Organisation**; or
- b) refuse the **Tenant Management Organisation's** request.

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

7.7 If the Council refuses the **Tenant Management Organisation's** request, the Council will within seven days inform the **Tenant Management Organisation** of its decision and the reasons for it.

7.8 If the **Tenant Management Organisation** considers its request has been unreasonably refused the provisions of clause 18 of Chapter 7 will apply.

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

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

*(Option C: The **Tenant Management Organisation** is authorised to end tenancies.)*

7.1 In carrying out its management functions under this Agreement, the **Tenant Management Organisation** will adopt recommended good practice, having regard to the guidance published by the relevant authorities and the Chartered Institute of Housing.

7.2 If the **Tenant Management Organisation** 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 **Tenant Management Organisation** is authorised in the name of the Council to take appropriate action or serve whichever notice of the notices mentioned in Schedule 5 is appropriate in the circumstances of the case.

7.3 The **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** is authorised to take Court proceedings, in the name of the Council.

7.6 The **Tenant Management Organisation** 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**

*(Option A: The Council makes decisions with no involvement from the **Tenant Management Organisation**)*

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.

8.2 The Council informs the **Tenant Management Organisation** where it intends 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.

## **8 Ending and renewing flexible tenancies**

*(Option B: The Council makes decisions following discussion with the **Tenant Management Organisation**)*

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 **Tenant Management Organisation** about how the policy should be applied in the case under consideration.

8.2 The Council informs the **Tenant Management Organisation** where it intends, 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.

## **8 Ending and renewing flexible tenancies**

*(Option C: The **Tenant Management Organisation** is authorised to make decisions)*

8.1 The **Tenant Management Organisation** is authorised in the name of the Council to determine whether flexible tenancies should or should not be renewed at the end of the fixed term in line with the Tenancy Policy.

8.2 The **Tenant Management Organisation** informs the Council of its decision not to renew a flexible tenancy within one week of providing this information to the tenant affected.



## 9 Anti social behaviour and harassment

*(Option A: The Council deals with anti-social behaviour and harassment.)*

- 9.1 The Council will investigate all complaints of anti-social behaviour and harassment, including in particular harassment on grounds of race, sexuality, religion or disability, which affect any resident of a **Property dwelling**, in accordance with the provisions set out in Schedule 6 (**Anti-Social Behaviour and Harassment Policy and Procedure**). The Council will use the same policy and procedures that it applies to cases of anti-social behaviour and harassment affecting residents in other properties owned by the Council.
- 9.2 The **Tenant Management Organisation** will inform the Council of any complaint or incident of anti-social behaviour or harassment that has come to its notice within 3 working days of its having come to its notice.

## 9 Anti social behaviour and harassment

*(Option B: The **Tenant Management Organisation** is authorised to deal with anti-social behaviour and harassment.)*

- 9.1 The **Tenant Management Organisation** will investigate and take action to deal with complaints of anti-social behaviour and harassment, including in particular harassment on grounds of race, sexuality, religion or disability, which affects any resident of a **Property dwelling**, in accordance with the provisions set out in Schedule 6.

## 10 Residents' disputes

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

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

## 10 Residents' disputes

*(Option B: The **Tenant Management Organisation** is authorised to deal with disputes.)*

- 10.1 If the **Tenant Management Organisation** receives from any lawful resident of a **Property dwelling** a written **Complaint** requesting the **Tenant Management Organisation** to take action against another person, the **Tenant Management Organisation** will investigate the **Complaint** within 21 days (or such other time limit as may be reasonable in the circumstances). The **Tenant Management Organisation** will decide whether the matter complained of is a **Breach** of the tenancy agreement or, as the case may be, term of the lease or freehold covenant.

10.2 If the **Tenant Management Organisation** considers that the matter complained of constitutes a **Breach**, the **Tenant Management Organisation** will take action to ensure that the breach is remedied (see clause 7).

10.3 If the **Tenant Management Organisation** considers that the matter complained of does not constitute a **Breach**, the **Tenant Management Organisation** will try to resolve the dispute by following the **Residents' Disputes Policy and Procedure** set out in Schedule 7.

## 11 Unlawful occupation

*(Option A: The Council takes action to end unlawful occupation. The **Tenant Management Organisation** notifies the Council of suspected unlawful occupation.)*

11.1 The **Tenant Management Organisation** will inform the Council in writing, providing evidence, if the **Tenant Management Organisation** 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 On receiving a report from the **Tenant Management Organisation** that a dwelling is unlawfully occupied, the Council will investigate, and inform the **Tenant Management Organisation** of the progress of the investigation every 28 days.

11.3 If, having carried out the investigation, the Council decides that the dwelling is unlawfully occupied, the Council will take such legal action as may be necessary to end the unlawful occupation and deal with the perpetrators.

## 11 Unlawful occupation

*(Option B: The **Tenant Management Organisation** investigates unlawful occupation and informs the Council.)*

11.1 If the **Tenant Management Organisation**:

a) has reason to believe that a **Property dwelling** is sublet without consent or occupied unlawfully; or

b) receives written evidence from the Council that the Council considers that a **Property dwelling** is occupied unlawfully, the **Tenant Management Organisation** will:

i) carry out an investigation to determine whether or not the dwelling is unlawfully occupied; and

ii) within 28 days inform the Council of the results of its investigation and recommend any action the Council needs to take.

11.2 If, having carried out the investigation, the **Tenant Management Organisation** decides that the dwelling is unlawfully occupied, the Council will take such legal

action as may be necessary to end the unlawful occupation and deal with the perpetrators.

## 11 Unlawful occupation

*(Option C: The **Tenant Management Organisation** is authorised to take action to terminate unlawful occupation of **Property dwellings**.)*

11.1 The Council will inform the **Tenant Management Organisation** 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 **Tenant Management Organisation**:

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 **Tenant Management Organisation** 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 **Tenant Management Organisation** intends to take.

11.3 If, having carried out the investigation, the **Tenant Management Organisation** decides that the dwelling is unlawfully occupied the **Tenant Management Organisation** is authorised to take such legal action as may be necessary to end the unlawful occupation and deal with the perpetrators.

## 12 Void dwellings

*(Option A: The Council manages void dwellings.)*

12.1 The Council will:

a) inform tenants that tenants wishing to end their tenancy should inform the Council; and

b) manage any **Property dwelling** that becomes and remains vacant for any reason.

12.2 The Council 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 Council or, as the case may be, by the **Tenant Management Organisation**, in accordance with whichever party has the obligation to carry out the repair in question under Chapter 2 of this Agreement.

## 12 Void dwellings

*(Option B: The Tenant Management Organisation manages void dwellings.)*

- 12.1 The **Tenant Management Organisation** will inform tenants that tenants wishing to end their tenancy should inform the **Tenant Management Organisation**, and will manage any **Property dwelling** that becomes and remains vacant for any reason.
- 12.2 The **Tenant Management Organisation** 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 **Tenant Management Organisation** 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

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

- 13.1 The Council will administer applications to exercise the Right to Exchange under section 92 of the Housing Act 1985 and section 158 of the Localism Act 2011, in accordance with the provisions of Schedule 8 (**Mutual Exchanges Policy and Procedure**).

## 13 Right to exchange

*(Option B: The Tenant Management Organisation administers the Right to Exchange.)*

- 13.1 The **Tenant Management Organisation** is authorised to receive **Application to Exchange** notices from secure tenants who have the Right to Exchange under section 92 of the Housing Act 1985 and 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

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

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

## 14 Right to assign to restricted category of persons

*(Option B: The Tenant Management Organisation administers the assignment.)*

- 14.1 The **Tenant Management Organisation** 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

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

- 15.1 The Council will process and, where appropriate, approve applications for subletting from secure tenants of **Property dwellings** made under section 93 of the Housing Act 1985.
- 15.2 The Council will, in deciding whether to give consent to subletting, act in accordance with the provisions of Schedule 10 (**Subletting Policy**). The Council will, on request, provide any tenant of a **Property dwelling** with full details of the current **Subletting Policy** free of charge. The council will give details to the **Tenant Management Organisation** of any consent given.

## 15 Applications to sublet

*(Option B: The **Tenant Management Organisation** administers applications from tenants to sublet.)*

- 15.1 The **Tenant Management Organisation** will process and, where appropriate, approve applications for subletting from secure tenants of **Property dwellings** made under section 93 of the Housing Act 1985.
- 15.2 The **Tenant Management Organisation** will, in deciding whether to give consent to subletting, act in accordance with the provisions of Schedule 10. The **Tenant Management Organisation** will, on request, provide any tenant of a **Property dwelling** with a copy of the current **Subletting Policy** [on payment of a reasonable charge]/[free of charge].
- 15.3 When giving consent, the **Tenant Management Organisation** will inform the council of its decision. Where the Council requires further information for the purposes of determining whether the consents have been given in accordance with the **Subletting Policy**, the **Tenant Management Organisation** shall provide that information.

## 16 Right of succession

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

- 16.1 The Council will administer any **Claim to the Right of Succession** of a person claiming he or she is qualified to succeed to the tenancy of a **Property dwelling** under sections 86A to 90 of the Housing Act 1985. A copy of the Council's policy for

administering such claims is set out in Annex B, and is available free of charge from the Council.

- 6.2 If the Council receives a **Claim to the Right of Succession**, it will within 14 days of receiving the claim inform the **Tenant Management Organisation** in writing that the claim has been made.
- 16.3 If the Council accepts a **Claim to the Right of Succession** it will inform the person or persons who made the claim in writing that it accepts the claim and at the same time inform the **Tenant Management Organisation** in writing that the **Claim to the Right of Succession** has been accepted and the name of the person who has succeeded to the tenancy.

## 16 Right of succession

*(Option B: The **Tenant Management Organisation** administers the Right of Succession.)*

- 16.1 The **Tenant Management Organisation** 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 86A to 90 of the Housing Act 1985. The **Tenant Management Organisation** 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 **Tenant Management Organisation**.
- 16.2 The **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** intends to accept the claim. The **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** has accepted the **Right of Succession**, request the **Tenant Management Organisation** 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 **Tenant Management Organisation** has refused the **Right of Succession**, request the **Tenant Management Organisation** 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 **Tenant Management Organisation**.

## 17 Giving consents

*[Both the **Tenant Management Organisation** and the Council have giving of consent functions.]*

- 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** 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

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

- 18.1.1 The Council will consult the **Tenant Management Organisation** about the general terms and conditions of sale of **Property dwellings**. The Council will also:
- a) provide the **Tenant Management Organisation** with a copy of the terms and conditions of sales; and
  - a) give the **Tenant Management Organisation** not less than one month's advance written notice of any proposed change to the terms and conditions of sales.
- 18.1.2 The **Tenant Management Organisation** may request the Council to alter any of the terms and conditions of sale which directly affect the **Tenant Management Organisation's** exercise of its management functions under this Agreement. The Council will not refuse to make or delay in making the alteration requested without good reason.
- 18.2 If a tenant serves notice claiming to exercise the **Right to Buy**, the Council will within 14 days of receiving such notice inform the **Tenant Management Organisation** in writing that the notice has been received. The Council will keep the **Tenant Management Organisation** informed of the progress of the claim at each major stage.



- 18.3 Within 14 days of receiving a written request from the Council, the **Tenant Management Organisation** will supply any information the Council may reasonably require in order to comply with its obligations under Part 5 of the Housing Act 1985.
- 18.4 The Council will give the **Tenant Management Organisation** 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.

## **18 Right to buy and sales**

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

- 18.1.1 The Council will consult the **Tenant Management Organisation** about the general terms and conditions of sale of **Property** dwellings. The Council will:
- a) provide the **Tenant Management Organisation** with a copy of the terms and conditions of sale; and
  - b) give the **Tenant Management Organisation** not less than one month's advance written notice of any proposed change to the terms and conditions of sale.
- 18.1.2 The **Tenant Management Organisation** may request the Council to alter any of the terms and conditions of sale which directly affects the **Tenant Management Organisation's** exercise of its management functions under this Agreement. The Council will not refuse to make or delay in making the alteration requested without good reason.
- 18.2 The Council will within 14 days notify the **Tenant Management Organisation** 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**.

18.3 The Council will keep the **Tenant Management Organisation** informed of the progress of the claim at each major stage.

*(Option 1: The **Tenant Management Organisation** can not terminate tenancies.)*

18.4 Within 14 days of receiving a written request from the Council, the **Tenant Management Organisation** will supply any information the Council may reasonably require in order to comply with its obligations under Part 5 of the Housing Act 1985.

*(Option 2: The **Tenant Management Organisation** is authorised to take action to terminate tenancies.)*

18.4 The **Tenant Management Organisation** will:

18.4.1 within 14 days of receiving a written request from the Council supply the Council with any information it may reasonably require in order to comply with its obligations under Part 5 of the Housing Act 1985;

18.4.2 inform the Council within 7 days of commencing possession proceedings that it has done so; and

18.4.3 immediately give the Council written notice if it obtains or has obtained a Court Order for the Possession of a dwelling in respect of which it has received notification under clause 18.2 that a tenant has served a notice claiming to exercise the **Right to Buy**.

18.5 The Council will give the **Tenant Management Organisation** at least seven days' notice in writing of the expected completion date of the sale of any dwelling in the **Property** under Part 5 of the Housing Act 1985. On receiving this notice the **Tenant Management Organisation** will immediately notify the Council in writing of any arrears of **Rent**.

18.6 The Council will not complete the sale of any **Property dwelling** if the tenant has any amount outstanding of **Rent** or any other payment due from him as a tenant for a period of four weeks after it has been lawfully demanded. Before completing the sale of any **Property dwelling** the Council will make all reasonable attempts to recover from the tenant any arrears notified to the Council under clause 18.5.

18.7 Where the Council fails to follow the procedure or fails to consult the **Tenant Management Organisation** as set out in this clause the Council will be liable for any rent arrears that arise.

## 18 Right to buy and sales

*(Option C: The **Tenant Management Organisation** collects **Rent**, manages **Rent Arrears** and is authorised to take action to terminate tenancies and wishes to receive **Right to Buy** applications from secure tenants.)*

18.1 The Council will consult the **Tenant Management Organisation** about the general terms and conditions of sale of **Property dwellings**. The Council will:

- a) provide the **Tenant Management Organisation** with a copy of the terms and conditions of sale;
- b) give the **Tenant Management Organisation** at least one month's advance written notice of any proposed change to the terms and conditions of sale; and
- c) keep the **Tenant Management Organisation** 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 **Tenant Management Organisation**, the **Tenant Management Organisation** 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 **Tenant Management Organisation** informed of the progress of the claim at each major stage.

18.3 The **Tenant Management Organisation** is authorised to receive notices from secure tenants of **Property dwellings** claiming to exercise the **Right to Buy**.

18.4 The **Tenant Management Organisation** will:

- a) give a secure tenant a form complying with section 176 of the Housing Act 1985 to exercise the **Right to Buy** within 7 days of receiving the request;
- b) keep a register of such requests received, showing date of receipt and the date on which the form was sent or given to the tenant;
- c) within two working days of receipt, send to the Council any notice claiming to exercise the **Right to Buy**; and
- d) keep a register of completed forms received, with a note of the date a form was received, and pass this information to the Council to enable the Council to calculate the relevant time for the purposes of section 122 of the Housing Act 1985.

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 **Tenant Management Organisation** of the notice referred to in clause 18.4 c).

18.6 The Council will within 14 days notify the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** will inform the Council within 7 days of commencing possession proceedings that it has done so.
- 18.9 The **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** as set out in this clause the Council will be liable for any rent arrears that arise.

## 19 Enquiries before exchange of contracts

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

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

19.2 The **Tenant Management Organisation** will provide the Council with such relevant information as it possesses to assist the Council in answering enquiries before exchange of contracts.

## 19 Enquiries before exchange of contracts

*(Option B: The **Tenant Management Organisation** deals with pre-contract enquiries.)*

19.1 The **Tenant Management Organisation** will deal with enquiries before exchange of contracts in accordance with the provisions of Schedule 12 (**Enquiries before exchange of contracts**), and be entitled to charge for this service in accordance with paragraph 3 of that Schedule.

## 20 Use of property

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

# Chapter 7

## Staffing and Management of the Relationship between the Tenant Management Organisation and the Council

### Note on clause 1 and TUPE

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

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

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

### **1 The transfer of staff from the Council to the Tenant Management Organisation where there is a transfer of an undertaking by the virtue of the Transfer of Undertakings (Protection of Employment) regulations 1981**

*[to be used only where TUPE applies and there is a transfer of staff from the Council to the **Tenant Management Organisation**.]*

1.1 The Council agrees that, as there is a transfer of an undertaking under this Agreement by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 1981, the staff listed in Schedule 1 (**Staff Transferred under TUPE**) have an automatic right to transfer to the employment of the **Tenant Management Organisation** on the same terms and conditions as they have with the Council. 1.2 The Council's terms and conditions for the staff are set out briefly in Schedule 1 and the Council warrants and covenants to the **Tenant Management Organisation** that:

- a) to the best of its knowledge and belief the details in that Schedule are correct;

b) all statutory requirements as to consultation of those staff have been complied with;

c) as at the **Starting Date** the Council will have paid those staff any amount due up to that date. The Council will have paid or will pay any amounts such as National Insurance contributions due for the period up to and including the **Starting Date**; and

d) subject to any duties of confidentiality that the Council may owe to those staff the Council has disclosed in writing to the **Tenant Management Organisation** any details of current grievance or disciplinary proceedings and any litigation in respect of any of those staff.

1.3 The Council undertakes to indemnify the **Tenant Management Organisation** against any costs damages or expenses arising out of or in connection with any breach of the warranties and covenants in clause 1.2 and against any claim by any person employed by the Council on or before the **Starting Date** and not listed in Schedule 1 that that person had a right to be employed by the **Tenant Management Organisation**. The Council's liability will not include any costs of the **Tenant Management Organisation** or any settlement of any claim by the **Tenant Management Organisation**, unless the costs or settlement have been approved in writing by the Council. Such approval will not to be withheld or delayed without good reason.

## **1 The transfer of staff from the Council to the Tenant Management Organisation where there is a transfer of an undertaking by the virtue of the Transfer of Undertakings (Protection of Employment) regulations 1981**

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

1.1 Clause not included.

## **2 Employment of staff (other than those transferring under clause 1)**

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

a) the **Tenant Management Organisation's** Equalities and Diversity Policy and Procedures (see Chapter 1 clause 10); and

b) the obligations imposed by statute.

### 3 Secondment of Council staff to the Tenant Management Organisation

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

3.1 Clause not included.

### 3 Secondment of Council staff to the Tenant Management Organisation

*(Option B: Secondment option is chosen.)*

- 3.1 The Council agrees to second staff to the **Tenant Management Organisation** to fill those posts that are listed in paragraph 2 of Schedule 2. (**The Secondment Arrangements for Council Staff**). All secondments require the agreement of both the Council and the **Tenant Management Organisation**.
- 3.2 The period of secondment will be as set out in paragraph 2 of Schedule 2.
- 3.3 The seconded staff will be employed and managed in accordance with the conditions set out in clause 3.4 and in Schedule 2.
- 3.4 The secondment of staff from the Council to the **Tenant Management Organisation** will be subject to the following conditions:
- a) the **Tenant Management Organisation** will decide the staffing structure and job descriptions. The **Tenant Management Organisation** will consult the Council where the **Tenant Management Organisation** proposes a staff structure or job descriptions that are different from the arrangements prior to the secondment;
  - b) the **Tenant Management Organisation** staff structure and job descriptions shall ensure that it is clear that all of the seconded staff are properly and principally accountable to the **Tenant Management Organisation** for the duration of the secondment;
  - c) the seconded staff will be employed on terms and conditions agreed by the **Tenant Management Organisation**. In agreeing terms and conditions the **Tenant Management Organisation** agrees to have regard to the views of the Council and to nationally agreed terms and conditions for Council staff. The **Tenant Management Organisation** may negotiate variations to provide local terms and conditions to meet local requirements;
  - d) the Council and the **Tenant Management Organisation** will agree arrangements for the recruitment and selection of staff. The process of advertising and appointing to the seconded posts requires the approval of the **Tenant Management Organisation**;
  - e) Schedule 2 sets out how grievance and disciplinary matters are to be dealt with including the role of the **Tenant Management Organisation** and the Council in those procedures;
  - f) The **Tenant Management Organisation** agrees to manage the staffing budget (including the costs of the seconded staff) as provided for in Chapter 5 of this



Agreement. The **Tenant Management Organisation** agrees to ensure that the proposed staffing structure is affordable within the agreed allowances. Savings that arise from vacant posts may be used by the **Tenant Management Organisation** to ensure that a level of service is maintained during those periods of vacancies; and

g) employees of the Council shall have the option not to apply for or to accept a secondment to the **Tenant Management Organisation**.

3.5 The **Tenant Management Organisation** or the Council may terminate the arrangement for the Council to provide seconded staff either:

a) by giving the other party at least 12 months' written notice of the intention to terminate the arrangement, on the date specified in the notice, or such shorter period of written notice as the other party agrees to;

b) where there has been a significant failure to perform or breach of the secondment conditions by either party, by the other party giving details of that breach and at least three months' notice of its intention to terminate; or

c) by terminating or amending this Agreement in accordance with clauses 18 to 20 of Chapter 1. Notice to terminate all or part of the secondment arrangement under this clause is to be issued with and expire at the same time as the notice to terminate or amend the Agreement.

## 4 Employment of contractors

*(Option A: The **Tenant Management Organisation** is free to choose contractors where the contract price is under a stated amount, and uses contractors from the Council's approved list where the contract price equals or exceeds that stated amount.)*

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

4.2 The **Tenant Management Organisation** will only appoint contractors to the **Tenant Management Organisation's Approved List** who:

a) have the capacity to do work required by the **Tenant Management Organisation** to an acceptable standard of quality;

b) have adequate public and employer's liability insurance or professional indemnity insurance if appropriate;

c) give the **Tenant Management Organisation** 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 on the Gas Safe Register or another equivalent body in another Member State of the European Union.

4.3 If the **Tenant Management Organisation** enters into a contract for management, support, repairs or other services, or for **Major Works**, the **Tenant Management Organisation** will enter into the contract:

a) where the value of the contract is less than the **Contract Works Limit**, with a contractor on the **Tenant Management Organisation's Approved List** or the **Council's Approved List**; or

b) where the value of the contract equals or exceeds the **Contract Works Limit**, with a contractor on the **Council's Approved List**.

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

4.5 The **Tenant Management Organisation** may request the Council to include a contractor on the **Council's Approved List**, and inclusion in response to such a request will not be refused or delayed without good reason. If the Council refuses to include the Contractor on the **Council's Approved List** the Council will notify the **Tenant Management Organisation** in writing of the reasons for the refusal.

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

4.7 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.

## 4 Employment of contractors

*(Option B: The **Tenant Management Organisation** establishes its own list of approved contractors.)*

- 4.1 The **Tenant Management Organisation** will establish a **Tenant Management Organisation Approved List** of contractors to provide the services the **Tenant Management Organisation** considers it needs to contract out in order to fulfil its obligations under this Agreement. The **Tenant Management Organisation** will not enter into a contract with any contractor who is not on the **Tenant Management Organisation's Approved List**.
- 4.2 The **Tenant Management Organisation** will only appoint contractors to the **Tenant Management Organisation's Approved List** who:
- a) have the capacity to do work required by the **Tenant Management Organisation** to an acceptable standard of quality;
  - b) have adequate public and employer's liability insurance or professional indemnity insurance if appropriate;
  - c) give the **Tenant Management Organisation** 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 on the Gas Safe Register or another equivalent body in another Member State of the European Union.
- 4.3 The **Tenant Management Organisation** will only enter into a contract for management, support, repairs or other services, or for **Major Works**, with a contractor on the **Tenant Management Organisation's Approved List**.
- 4.4 The Council may request the **Tenant Management Organisation** to include a contractor on the **Tenant Management Organisation's Approved List**, and inclusion in response to such a request will not be refused or delayed without good reason. If the **Tenant Management Organisation** refuses to include a contractor requested by the Council on the **Tenant Management Organisation's Approved List** the **Tenant Management Organisation** will notify the Council in writing of the reasons for the refusal.
- 4.5 The Council may request the **Tenant Management Organisation** to remove a contractor from the **Tenant Management Organisation's Approved List**. The request will be in writing and will state the reasons why the Council considers that the contractor should be removed from the **Tenant Management Organisation's Approved List**. The **Tenant Management Organisation** will give proper consideration

to a request from the Council and will within three months of receiving the request inform the Council in writing of the **Tenant Management Organisation's** decision. If the **Tenant Management Organisation** decides not to remove the contractor from the **Tenant Management Organisation's Approved List**, the **Tenant Management Organisation** will give the Council written reasons for the **Tenant Management Organisation's** decision.

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

## **5 Access to Council officers**

5.1 The Council will ensure the **Tenant Management Organisation** has access to all the Council officers with whom the **Tenant Management Organisation** 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 **Tenant Management Organisation** by the **Starting Date** and updated when necessary.

## **6 Liaison officers**

6.1 On or before the **Starting Date** the Council will nominate an officer from the staff concerned with the management of the Council's housing to be the **Liaison Officer** between the Council and the **Tenant Management Organisation**. The **Liaison Officer** will be the **Tenant Management Organisation's** first point of contact on day to day matters concerning the operation of this Agreement and the obligations of the **Tenant Management Organisation** and the Council under this Agreement. Any changes to the work of the liaison officer will be with the agreement of both parties. The role and the responsibilities of the **Liaison Officer** are set out in Schedule 3 (**Liaison Officer Role and Responsibilities**).

6.2 The Council may by written notice to the **Tenant Management Organisation** change the **Liaison Officer**.

6.3 If invited to do so by the **Tenant Management Organisation**, the **Liaison Officer** may attend and speak (but not vote) at all meetings of the **Tenant Management Organisation**, its committees or subcommittees. The **Tenant Management Organisation** will send the **Liaison Officer** copies of all agendas, papers and minutes of general meetings, committee meetings and subcommittee meetings.

6.4 The Council will be open and accountable in all dealings concerning the **Tenant Management Organisation** and the operation of this Agreement except where this would involve a breach of confidentiality or contravene the Data Protection Act 1998.

6.5 By the **Starting Date** the **Tenant Management Organisation** will nominate either a member of the Management Committee or a member of staff to be the **Tenant Management Organisation Liaison Officer**. The **Tenant Management Organisation**

**Liaison Officer** will be the Council's first point of contact on day to day matters concerning the operation of this Agreement and the obligations of the **Tenant Management Organisation** and the Council under this Agreement.

6.6 The **Tenant Management Organisation** may change the **Tenant Management Organisation Liaison Officer** by written notice to the Council.

## **7 Tenant Management Organisation Liaison committee**

*[A **Tenant Management Organisation Liaison Committee** meets to discuss strategic issues and general policy concerning **Tenant Management Organisation's** and not the performance of individual **Tenant Management Organisations**.]*

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

7.2 The **Tenant Management Organisation Liaison Committee** will discuss strategic issues and matters of general policy that relate to **Tenant Management Organisations**, but not the performance of individual **Tenant Management Organisations**.

7.3 The **Tenant Management Organisation** may send representatives to each meeting of the **Tenant Management Organisation Liaison Committee**.

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

## **8 The Council's nominee**

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

8.1 Clause not included.

## **8 The Council's nominee**

*(Option B: Nomination of non-voting Council nominee for **Tenant Management Organisations** run by a Management Committee.)*

8.1 The Council may nominate one person (or such greater number as the **Tenant Management Organisation** requests) to serve as a non-voting member or non-voting members of any **Tenant Management Organisation Committee**.

8.2 The Council will ensure that any nominee will act in the **Tenant Management Organisations** best interests and support and assist the **Tenant Management Organisation** in exercising its management functions under this Agreement.

8.3 The **Tenant Management Organisation** will co-opt any person nominated by the Council under this clause to serve as a non-voting member of the **Tenant Management Organisation Committee** 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; and

b) the **Tenant Management Organisation Committee** on which he or she is to serve.

8.5 Any person so nominated will be entitled remain on the **Tenant Management Organisation Committee** for one year or such longer period as the **Tenant Management Organisation** may agree and after that period may be re-nominated by the Council.

8.6 The **Tenant Management Organisation** will be entitled to remove any such person from the **Tenant Management Organisation Committee** if that person fails to attend at least three consecutive meetings in any one year or for any other reason for which a member of that **Tenant Management Organisation Committee** may be removed in accordance with its constitution.

8.7 Any person nominated by the Council under this clause to serve on the **Tenant Management Organisation's** Committee of Management may attend and speak (but not vote) at general meetings of the **Tenant Management Organisation**.

## 8 The Council's nominee

*(Option C: Nomination of voting Council nominee for committee-run **Tenant Management Organisations**.)*

8.1 The Council may nominate one person (or such greater number as the **Tenant Management Organisation** requests, provided that that number is less than the number of **Tenant Management Organisation** members on the committee in question) to serve as a full voting member or full voting members of any **Tenant Management Organisation Committee**.

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

8.3 The **Tenant Management Organisation** will co-opt any person nominated by the Council under this clause to serve as a full voting member of the **Tenant Management Organisation Committee** 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) the **Tenant Management Organisation Committee** on which the person is to serve; and
- c) 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 The **Tenant Management Organisation** will be entitled to remove any such person from the **Tenant Management Organisation Committee** if that person fails to attend at least three consecutive meetings in any one year or for any other reason for which a member of that **Tenant Management Organisation Committee** may be removed in accordance with its constitution.

8.6 Any person nominated by the Council under this clause to serve on the **Tenant Management Organisation's** Committee of Management may attend and speak (but not vote) at general meetings of the **Tenant Management Organisation**.

## **8 The Council's nominee**

*(Option D: Nomination of Council nominee to attend general meetings of **Tenant Management Organisation**, without voting rights, where the **Tenant Management Organisation** is run by general meetings.)*

8.1 The Council may nominate one person (or such greater number as the **Tenant Management Organisation** requests) to attend and speak (but not to vote) at general meetings of the **Tenant Management Organisation**.

8.2 The Council may also nominate one person to serve as a non-voting member of each **Tenant Management Organisation Committee**.

8.3 The Council will ensure that any nominee will act in the **Tenant Management Organisation** best interests and support and assist the **Tenant Management Organisation** in exercising its management functions under this Agreement.

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; and
- b) whether the person nominated is nominated to attend general meetings or to serve on a named committee.

8.5 Any person so nominated will remain on the **Tenant Management Organisation Committee** to which he or she was nominated for one year or such longer period as the **Tenant Management Organisation** may agree and after that period may be re-nominated by the Council.

8.6 The **Tenant Management Organisation** may remove any such person from the **Tenant Management Organisation Committee** to which he or she was nominated if

that person fails to attend at least three consecutive meetings in any one year or for any other reason for which a member of that **Tenant Management Organisation Committee** may be removed in accordance with its constitution.

## 8 The Council's nominee

*(Option E: Nomination of Council nominee to attend general meetings of **Tenant Management Organisation**, with voting rights, where **Tenant Management Organisation** is run by general meetings.)*

- 8.1 The Council may nominate one person (or such greater number as the **Tenant Management Organisation** requests) to attend, speak and vote at general meetings of the **Tenant Management Organisation**.
- 8.2 The Council may also nominate one person (or such greater number as the **Tenant Management Organisation** requests) to serve as a full voting member or full voting members of any **Tenant Management Organisation Committee**.
- 8.3 The Council will ensure that any nominee will act in the **Tenant Management Organisation's** best interests and support and assist the **Tenant Management Organisation** in exercising its management functions under this Agreement.
- 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; and
  - b) whether the person nominated is nominated to attend general meetings or to serve on a named committee; and
  - c) 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 The **Tenant Management Organisation** will be entitled to remove any such person from the **Tenant Management Organisation Committee** to which he or she was nominated if that person fails to attend at least three consecutive meetings in any one year or for any other reason for which a member of that **Tenant Management Organisation Committee** may be removed in accordance with its constitution.

## 9 Help to the Tenant Management Organisation

- 9.1 The Council will consider all written requests made by the **Tenant Management Organisation** for help in carrying out any of the obligations of the **Tenant Management Organisation** under this Agreement.
- 9.2 Where a request for help is made by the **Tenant Management Organisation** under this clause the Council will consider the **Tenant Management Organisation's** request and give the **Tenant Management Organisation** 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 **Tenant Management Organisation'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 **Tenant Management Organisation**.

9.4 The Council agrees to respond to all correspondence from the **Tenant Management Organisation** 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 **Tenant Management Organisation** under the following clauses:

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

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

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

10.3 Except for the notices mentioned in clause 10.1, any notice or letter which the **Tenant Management Organisation** 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 **Tenant Management Organisation** under the terms of this Agreement is to be sent to the Secretary of the **Tenant Management Organisation** at the **Tenant Management Organisation's Registered Office**.

## 11 Misdirected notices

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

## 12 Notice of legal proceedings

- 12.1 The Council will within five working days notify the **Tenant Management Organisation** of the commencement of any legal proceedings that may affect the exercise of the **Tenant Management Organisation'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 **Tenant Management Organisation** 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 **Tenant Management Organisation** will provide the Council with any information the Council may require in order to comply with the obligations imposed on the Council by law, including any information required the Regulator, or the Council's Internal or external Auditor to carry out their duties.
- 13.2 The Council will provide the **Tenant Management Organisation** with any information the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** will inform the Council in writing as soon as possible if:
- a) the **Tenant Management Organisation** resolves to investigate a transfer of ownership of the **Property**; and

b) the **Tenant Management Organisation** 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 **Tenant Management Organisation** in writing as soon as possible:

a) of the progress of a matter mentioned in clause 14.1; and

b) if it receives any notice under section 13 of the Leasehold Reform Housing and Urban Development Act 1993 (leasehold enfranchisement) that any person is claiming the **Right to Enfranchise**.

## 15 Statutory consultation

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

15.1 Subject to the provisions of clauses 5 and 6 of Chapter 4, the Council will carry out consultation with tenants or leaseholders required by statute ("statutory consultation").

## 15 Statutory consultation

*(Option B: The **Tenant Management Organisation** carries out statutory consultation.)*

15.1 Subject to the provisions of clauses 5 and 6 of Chapter 4 and of clause 15.2, the **Tenant Management Organisation** 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 **Tenant Management Organisation's** consent. Such consent will not be withheld or delayed without good reason.

15.3 If the Council wishes the **Tenant Management Organisation** to carry out statutory consultation on a particular matter the Council will send to the **Tenant Management Organisation** a written request which:

a) informs the **Tenant Management Organisation** 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 **Tenant Management Organisation** is to complete the consultation.

15.4 The Council will provide the **Tenant Management Organisation** with such additional information or assistance as the **Tenant Management Organisation** may require in consulting tenants or leaseholders.

15.5 The **Tenant Management Organisation** 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 **Tenant Management Organisation** in carrying out any consultation under this clause.

## **16 Non-statutory consultation**

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

16.2 Where the Council or the **Tenant Management Organisation** 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 Tenant Management Organisation'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 **Tenant Management Organisation** 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 **Tenant Management Organisation** will provide the Council with the assistance and information it may reasonably require in dealing with a Housing Ombudsman' Service investigation of a **Management Complaint** about the **Tenant Management Organisation'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 **Tenant Management Organisation** arises out of the operation of this Agreement, the Council or, as the case may be, the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation**; and

iii) where one party does not accept the reasons that have been given by the other party as to why, following service of the Notice, it is not able to comply with the requirements of the Notice.

*(Option 1: **Tenant Management Organisations** run by a Management Committee.)*

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

*(Option 2: **Tenant Management Organisations** run by general meetings.)*

18.3 If the Council serves a **Notice of Dispute** on the **Tenant Management Organisation**, the **Tenant Management Organisation** will, within 21 days of receiving it, consider the dispute at a General Meeting of the **Tenant Management Organisation**. The **Tenant Management Organisation** 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 General Meeting.

### **Provisions common to Option 1 and Option 2**

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

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

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

## **19 Information to the Secretary of State**

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

# Chapter 8

## Performance, Monitoring and Reviewing of Standards

### 1 The Tenant Management Organisation's performance standards

- 1.1 In carrying out its management functions under this Agreement the **Tenant Management Organisation** agrees to comply with the policies, procedures and performance standards set out in the Schedules to this Agreement.
- 1.2 To ensure that the **Tenant Management Organisation** complies with the provisions of clause 1.1 the **Tenant Management Organisation** agrees to set the **Tenant Management Organisation's Key Performance Indicators ("KPIs")**, which enable the **Tenant Management Organisation** 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 **Tenant Management Organisation** agrees to provide information to enable the Council to monitor the effective performance of the **Tenant Management Organisation**.
- 1.4 The **Tenant Management Organisation's Key Performance Indicators** will:
  - a) be set in consultation with the Council;
  - b) take into account the length of time the **Tenant Management Organisation** has managed the **Property** dwellings under this Agreement, the size of the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation**.

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 it to measure its performance.

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 **Tenant Management Organisation** will provide such information and access to records as the Council may reasonably need to monitor the **Tenant Management Organisation's** performance.

3.2 The Council and **Tenant Management Organisation** should agree on the frequency of any periodic monitoring meetings for the purposes of:

- a) monitoring the performance of the **Tenant Management Organisation** 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 **Key Performance Indicator's**, 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 **Tenant Management Organisation** and council should agree on any follow up action. Where it is agreed that the council will prepare a report which evaluates the **Tenant Management Organisation** and its own performance, this should be sent to the Tenant Management Organisation committee, and its contents fed into the council's internal monitoring arrangements.

3.4 The Council will ensure that the obligations imposed on the **Tenant Management Organisation** under this Chapter are not so onerous as to prevent the **Tenant Management Organisation** from fulfilling its obligations under this Agreement or to impair its ability to fulfil those obligations.

### **4 Annual review**

4.1 The Council and **Tenant Management Organisation** should agree on the frequency with which the **Tenant Management Organisation** reviews its performance, and the arrangements for such a review. This should not be more frequently than once per year, and should involve the **Tenant Management Organisation** comparing its performance against the agreed key performance indicators. Where the **Tenant Management Organisation** 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 **Tenant Management Organisation** to publish the **Tenant Management Organisation's Performance Report**.

- 4.2 The **Tenant Management Organisation** will send a copy of its performance review report to the Council. It is good practice for the **Tenant Management Organisation** to also make available information regarding its performance to every tenant, leaseholder and freeholder. The **Tenant Management Organisation** may also make the information available to others, on request.
- 4.3 The Council and **Tenant Management Organisation** should decide on the next steps following the performance review report, ideally within 3 months of its completion. This could include a meeting to consider their respective performance and to decide on the action needed to rectify any deficiencies in the **Tenant Management Organisation's** or the Council's performance. Nothing in this clause prevents the Council or the **Tenant Management Organisation** taking action for breach of this Agreement in respect of deficiencies in performance under clause 19 of Chapter 1.
- 4.4 Within three months of a Review meeting, the **Tenant Management Organisation** should produce a report of the meeting. This report should be made available to the **Tenant Management Organisation's** Management Board.

## **5 Equalities and diversity**

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

## **6 Periodic and special reviews**

- 6.1 The council and **Tenant Management Organisation** will decide the arrangements for measuring the total performance of the **Tenant Management Organisation** in carrying out its management functions under this agreement. Subject to clause Subject to clauses 6.7 this review should not be held more frequently than once every three years. In monitoring the **Tenant Management Organisation's** performance, the council and the **Tenant Management Organisation** 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 **Tenant Management Organisation**;

- b) make positive recommendations as to the action and practical steps which the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** will respond in writing to the **Review Report** setting out:

- a) the recommendations for action which the **Tenant Management Organisation** accepts, setting out the **Tenant Management Organisation's** plan and periods within which those recommendations will be implemented; and
- b) the findings and recommendations (if any) with which the **Tenant Management Organisation** 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 **Tenant Management Organisation** disagrees with the **Review Report** and responds to it under clause 6.3 b) , the Council will, within one month of receiving the **Tenant Management Organisation's** response, give reasoned consideration to the **Tenant Management Organisation's** response and, in writing, either:

- a) accept the **Tenant Management Organisation's** response and amend the findings and recommendations for action in the **Review Report**; or
- b) give reasons why the **Tenant Management Organisation's** response is not accepted by the Council and require the **Tenant Management Organisation**, within one month, to submit its written plan for implementing the recommendations.

6.5 If a disagreement remains between the Council and the **Tenant Management Organisation** 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 **Tenant Management Organisation** before a decision under clause 17 of Chapter 1 as to whether the **Tenant Management Organisation** 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 **Tenant Management Organisation**, 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 . The consent of the **Tenant Management Organisation** 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 **Tenant Management Organisation** for breach of this Agreement in respect of deficiencies in performance under clause 19 of Chapter 1.

## **Schedules**

### **The Schedule: Key performance indicators Clause 1**

The **Tenant Management Organisation's** Key Performance Indicators, to enable it to measure its performance against the standards it is required to achieve under the Agreement, must be listed in Annex A to this Schedule. This must also describe the basis on which the Indicators have been set.

The Council's Key Performance Indicators, to enable it to measure its performance against the standards it is required to achieve under the Agreement, must be listed in Annex B to this Schedule. This must also describe the basis on which the Indicators have been set.

# Chapter 9

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

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

### **Allowances**

*(Chapter 1, clause 18 – and see Chapter 5, clause 1)*

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

### **Annual Accounts**

*(Chapter 5, clause 10, Option B)*

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

### **Annual Review**

*(Chapter 8, clause 4)*

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

### **Annual Review Meeting**

*(Chapter 8, clause 4)*

The annual meeting between the **Tenant Management Organisation** and the Council to review their respective performance.

### **Anti-Social Behaviour Policy and Procedures**

*(Chapter 6, clause 2)*

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

## **Anti-Social Behaviour and Harassment Policy and Procedure**

*(Chapter 6, clause 8, Option A)*

The policy and procedure set out in Schedule 7 to Chapter 6 with which the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** that the **Tenant Management Organisation** 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 **Tenant Management Organisation**. A **Breach Notice** will normally only be served after failure by the **Tenant Management Organisation** to implement an improvement plan.

## **Breach**

*(Chapter 6, clause 9, Option B)*

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

## **Choice based Lettings Scheme**

*(Chapter 6 clause 3, Option D)*

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

## **Claim to the Right of Succession**

*(Chapter 6, clause 15)*

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

## **Complaint**

*(Chapter 6, clause 9, Option B)*

A written request from a resident to the **Tenant Management Organisation** requesting the **Tenant Management Organisation** to take action

## **Consultation requirements**

*(Chapter 4, clause 6)*

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

## **Contract Works Limit**

*(Chapter 7, clause 4, Option A)*

The Contract Works limit is £..... The **Tenant Management Organisation** must let contracts above this amount to contractors from the **Council's Approved List**.

## **Council's Approved List**

*(Chapter 7, clause 4)*

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

## **Council's Key Performance Indicators**

*(Chapter 8, clause 2)*

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

## **Council's Offices**

*(Chapter 7, clause 10)*

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

## **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 **Tenant Management Organisation's** Equal Opportunities Policies and Procedures set out in Schedule 2 to Chapter 1.

## **Estate Services**

*(Chapter 2, clause 10)*

Services provided by the **Tenant Management Organisation** or the Council in respect of an estate.

### **Failure Notice**

*(Chapter 1, clause 19)*

Written notice from the **Tenant Management Organisation** 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 **Tenant Management Organisation** or its obligations under the Agreement against a person with whom the resident is in dispute.

### **Financial Procedures**

*(Chapter 5, clause 2)*

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

### **Financial Report**

*(Chapter 5, clause 10, Option A)*

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

### **Financial Year**

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

The **Tenant Management Organisation'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.

### **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 **Tenant Management Organisation** to improve the **Tenant Management Organisation's** performance or prevent serious financial breaches by it.

### **Improvements Policy and Procedure**

*(Chapter 2, clause 13)*



The policy and procedure agreed between the Council and the **Tenant Management Organisation** 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 **Tenant Management Organisation** area which is included in the Council's published allocation scheme.

### **Liaison Officer**

(Chapter 7, clause 6)

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

### **List of Council Officers**

(Chapter 7, clause 5)

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

### **Major Works**

(Chapter 2, clause 6)

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

### **Major Works Account**

(Chapter 5, clause 9)

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

### **Management and Maintenance Costs**

(Chapter 5, clause 2)

Costs incurred by the **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** 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 **Tenant Management Organisation** held at least once every six months to monitor the performance of the **Tenant Management Organisation** and the Council in carrying out their respective management functions under this Agreement.

## **Net Rent**

*(Chapter 3, clause 9, option C)*

The net amount of **Rent** due from the **Tenant Management Organisation** to the Council at the end of each quarter, as shown in the rent demand sent to the **Tenant Management Organisation** by the Council.

## **Notice of Dispute**

*(Chapter 7, clause 18)*

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

## **Notice of Breach**

*(Chapter 6, clause 7, Option A)*

Written notice served by the **Tenant Management Organisation** on the Council requesting the Council to take action for breach of tenancy, lease, or freehold covenant (other than on the ground of arrears of rent or service charge).

## **Partnering Contract**

*(Chapter 2, clause 7)*

A contract for works entered into between the Council and a third party partner, to carry out major works in the form of a partnering arrangement.

## **Planned Maintenance Repairs**

*(Chapter 2, clause 1)*

Cyclical and programmed repairs, including planned preventative repairs.

## **Property**

*(Chapter 1, clause 2)*

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

## **Property Dwelling**

*(Chapter 1, clause 2)*

A dwelling listed in Schedule 1 to Chapter 1.

## **Rent**

*(Chapter 3, clause 1)*

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

## **Repair Notice**

*(Chapter 2, clause 3)*

Written notice from the **Tenant Management Organisation** 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 **Tenant Management Organisation** that the **Tenant Management Organisation** is not carrying out a repair it has agreed to carry out. The notice can also claim that the standards and time scales agreed are not being complied with.

## **Reserve Fund**

*(Chapter 5, clause 8, Option B)*

The fund set up by the **Tenant Management Organisation** to meet specified potential liabilities.

## **Residents' Disputes Policy and Procedure**

*(Chapter 6, clause 9, Option B)*

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

## **Responsive Repairs**

*(Chapter 2, clause 1)*

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

## **Review Report**

*(Chapter 8, clause 7)*

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

**Right of Succession Notice**

*(Chapter 6, clause 15)*

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

**Right of Succession Policy**

*(Chapter 6, clause 15)*

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

**Right to Buy**

*(Chapter 1, clause 18 – see also Chapter 6, clause 17)*

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

**Right to Enfranchise**

*(Chapter 1, clause 18 – see also Chapter 7, clause 14)*

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

**Right to Manage**

*(Chapter 1, clause 18)*

The rights exercisable by **Tenant Management Organisations** under the **Right to Manage Regulations**.

**Right to Manage Regulations**

*(Chapter 1, clause 3)*

The Housing (Right to Manage) Regulations 1994

**Right to Repair Claim**

*(Chapter 2, clause 13)*

A claim made under the **Right to Repair Regulations**.

**Right to Repair Regulations**

*(Chapter 2, clause 13)*

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

**Secondment Arrangement**

*(Chapter 7, clause 3)*

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

**Secure tenant**

*(Chapter 1, clause 17)*

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

**Selection of Tenants Policy and Procedure**

*(Chapter 6, clause 3)*

Policy and Procedure operated by the Council or the **Tenant Management Organisation** 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 **Tenant Management Organisation** within the meaning of section 18 of the Landlord and Tenant Act 1985.

### **Service Charges Procedure**

*(Chapter 4, clause 1)*

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

### **Special Review**

*(Chapter 8, clause 7)*

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

### **Starting Date**

*(Chapter 1, clause 5)*

The Management Agreement starts on \_\_\_\_\_ *(fill in date)*.

### **Starting Date Arrears**

*(Chapter 3, clause 4)*

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

### **Subletting Policy**

*(Chapter 6, clause 14)*

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

### **Supervision Notice**

*(Chapter 1, clause 19)*

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

### **Surplus Fund**

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

The Surplus Fund is the efficiency savings made by the **Tenant Management Organisation**. It is shown either on the Financial Report prepared by the Council (if clause

10, Option A is used) or in the **Tenant Management Organisations** Annual Accounts and on its balance sheet (if clause 10, Option B is used).

### **Tenancy Agreement**

*(Chapter 3, clause 2)*

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

### **Tenancy Variation Notice**

*(Chapter 6, clause 6)*

Notice served by either the Council or the **Tenant Management Organisation** 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**.

### **Tenant Management Organisation** *(Title Page)*

The **Tenant Management Organisation**. A **Tenant Management Organisation** is required to meet the conditions set out in regulation 1(4) of the **Right to Manage Regulations**.

### **Tenant Management Organisation's Approved List**

*(Chapter 7, clause 4)*

The list of contractors that are approved to enter into contracts with the **Tenant Management Organisation**.

### **Tenant Management Organisation Committee**

*(Chapter 7, clause 8)*

A Committee of the **Tenant Management Organisation** properly constituted under the **Tenant Management Organisation's** Constitution.

### **Tenant Management Organisation's Key Performance Indicators**

*(Chapter 8, clause 1)*

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

### **Tenant Management Organisation Liaison Committee**

*(Chapter 7, clause 7)*

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

### **Tenant Management Organisation's Performance Report**

*(Chapter 8, clause 4)*

The report produced within three months of the end of the **Financial Year** by the **Tenant Management Organisation**, which compares the **Tenant Management Organisation's** and the Council performance against their respective key performance indicators.

### **Tenant Management Organisation's Registered Office**

*(Chapter 7, clause 10)*

The registered office of the **Tenant Management Organisation**, 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 **Tenant Management Organisation**.

### **Void Losses**

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

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

### **Voids and Bad Debts Percentage**

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

The percentage of the total amount of money collectable by the **Tenant Management Organisation** on behalf of the Council allowed for rent losses from dwellings that remain empty while reletting occurs (\*and bad debts from rent and service charge arrears which the **Tenant Management Organisation** is unable to recover). *Note: omit section of definition in brackets if Chapter 3, clause 12, option A is used*

### **Voids Percentage Amount**

*(Chapter 3, clause 9)*

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

### **Warning Notice**

*(Chapter 1, clause 19)*

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

### **Working day**

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