

THE RIGHT TO MANAGE

MODULAR

MANAGEMENT AGREEMENT

FOR

TENANT MANAGEMENT

ORGANISATIONS

**Department of the Environment
Welsh Office**

Crown copyright 1994

THIS AGREEMENT is made the day of 19

BETWEEN

.....
(Name of Council)

(called the "Council" in this Agreement)

AND

.....
(Name of Tenant Management Organisation)

(called the "**TMO**" in this Agreement)

In this Agreement, made under the Housing (Right to Manage) Regulations 1994 (the "**Regulations**"), the Council appoints the **TMO** as its Agent to carry out certain housing management functions in relation to the Property listed in Appendix 1 to Chapter 1 (the "**Property**").

The Council and the **TMO** agree to abide by the terms of this Agreement which are set out in Chapters 1 to 8 and their Appendices and which form part of this Agreement.

Words which appear in bold **CAPITAL LETTERS** in this Agreement have the value and meaning given to them in Chapter 8, Clause 1. Words which appear in **Bold Letters** are defined in the text of this Agreement, but for ease of reference are also listed in alphabetical order in Chapter 8, Clause 2.

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

Signed Borough Solicitor/
Chief Executive

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

SignedCommittee Member

SignedCommittee Member

*Note: the sealing clause is to be adapted as appropriate for the Council and the **TMO**.*

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ACKNOWLEDGEMENTS

This Modular Management Agreement for Tenant Management Organisations was commissioned by the Department of the Environment as part of the statutory guidance on the Right to Manage.

Work on the Agreement and Appendices was carried out by David Rodgers (CDS Co-operative Housing Society), Hexagon Housing Association and Priority Estates Project, with legal advice from Winckworth and Pemberton, and advice on financial clauses from the Institute of Public Finance.

The Department of the Environment acknowledges the contribution in the preparation of this Agreement of the following:

David Rodgers

Director, CDS Co-operative Housing Society

Wendy Newell

Hexagon Housing Association

Jane Summers

Priority Estates Project

Catherine Hand

Winckworth and Pemberton

Derek Hanson

Institute of Public Finance

This edition of the Modular Management Agreement for Tenant Management Organisations (TMOs) is approved by the Secretary of State for the purposes of the Housing (Right to Manage) Regulations 1994, in place of the March 1994 edition. Clause 17(1)(e) of Chapter 1 allows TMOs or local authorities which have entered into a TMO management agreement on the basis of an earlier edition to amend their existing agreement to conform with this new edition.

CHAPTER 1

GENERAL PROVISIONS OF THE AGREEMENT

1 Parties to the Agreement

1 This Agreement is between the Council and the **TMO**.

2 The Council and the Property

2 The Council is a local housing authority with the powers and duties given to it by Part II of the Housing Act 1985. The Council is the freehold/leasehold owner of certain housing and associated property which together with certain other property in respect of which the Council has management obligations is the subject of this Agreement (the "**Property**"). The **Property** is described fully in Appendix 1 to this chapter.

3 The TMO

3.1 The **TMO** is [insert type of organisation, eg. a housing co-operative registered under the provisions of the Industrial and Provident Societies Act 1965; a society registered under the provisions of the Industrial and Provident Societies Act 1965 the aims and objectives of which are for the benefit of the community; a company limited by guarantee registered under the provisions of the Companies Act 1985].

3.2 While this Agreement is in force the **TMO** shall not amend its constitution without the Council's prior written consent, which consent shall not be unreasonably withheld or delayed. At no time may the **TMO** amend its constitution so that it no longer conforms to the requirements of Regulation 1(4) of the **Regulations**.

4 Statement of Delegation of Management under the Right to Manage

4.1 The Council appoints the **TMO** as the Council's Agent in respect of the management responsibilities delegated to the **TMO** in accordance with the terms of this Agreement which conforms to the approved form of management agreement (the "**Modular Management Agreement**") required by the **Regulations**.

4.2 Nothing in this Agreement gives to the **TMO** any ownership or other legal rights, powers or duties in respect of the **Property** other than the right to manage and maintain the **Property** under the terms of this Agreement. The Council keeps the statutory rights, powers and duties in respect of the **Property** which are not specifically delegated to the **TMO** by this Agreement.

- 4.3 This Agreement does not create a legal partnership between the Council and the **TMO**.
- 4.4 *(Optional clause: Contracting for services which are not housing management functions within section 27 of the Housing Act 1985). This option can only be included if both the **TMO** and the Council agree and the **Approved Person** (as referred to in the **Regulations**) cannot recommend that it be included in the proposed agreement without the agreement of the **TMO** and the Council.*
- 4.4 The Council and the **TMO** agree that in order efficiently to provide the best possible service to residents in the **Property** and its immediate vicinity the Council also contracts with the **TMO** for the carrying out the tasks listed in Part 1 of Appendix 3 to this chapter, which are not part of the Council's housing management functions, to be carried out by the **TMO** in accordance with the performance standards set out in part 2 of Appendix 3 to this chapter.

5 STARTING DATE

- 5 *(Option A: the same **STARTING DATE** for all functions delegated to the **TMO**).*
- 5 The **TMO** shall carry out the tasks specified in this Agreement from the **STARTING DATE** until this Agreement is ended in the manner provided for in clause 19 of this chapter.

5 STARTING DATE

- 5.1 *(Option B: staggered **STARTING DATES** for different functions delegated to the **TMO** or for additional properties provided that all properties are listed at Appendix 1).*
- 5.1 The **TMO** shall carry out the tasks specified in this Agreement from the **STARTING DATE** until this Agreement is ended in the manner provided for in clause 19 of this chapter **save that** the **TMO's** responsibility for the following tasks or properties listed below shall begin on the dates stated in this clause. Where this agreement is varied in accordance with clause 17.1 a) below, the variation shall take effect three months after it is made.

*(Drafting note: list here the chapter, clause number references and brief description of tasks which have a different start date from the **STARTING DATE** or the different start dates for named properties: for example,*

Chapter 3, clause 2, option C Rent Arrears and **Service Charge** Collection and Arrears Control; **STARTING DATE: 1 December 1994.**)

- 5.2 To enable the **TMO** to carry out its responsibilities under this Agreement the Council shall pay the **ALLOWANCES** to the **TMO**. The **ALLOWANCES** shall be calculated and paid in the manner set out in this Agreement (see chapter 4, clauses 1 and 2).

6 The TMO's Role as Managing Agent for the Council

- 6.1 The **TMO** shall carry out housing management functions in relation to the **Property** as agent of the Council in accordance with the terms of this Agreement.
- 6.2 In carrying out these functions the **TMO** shall comply with the legal obligations which bind the Council in respect of these functions.
- 6.3 The **TMO** shall not delegate or assign any of the responsibilities or rights granted by this Agreement to any other person or body but nothing in this clause prevents the **TMO** from employing contractors to carry out any task.
- 6.4 The **TMO** also agrees that it will carry out its obligations under this Agreement competently and in accordance with the standards of performance set out in the appendices to the chapters of this Agreement.
- 6.5 The Council may, in writing under this clause, inform the **TMO** of actions which could lead to a local housing authority suffering in relation to any year, as a result of the application of rules in a Determination made under section 80 of the Local Government and Housing Act 1989 (the Housing Revenue Account Subsidy determination) and relating to the provision of services, facilities and rights or to disproportionate rent increases, a reduction in that element of the Housing Revenue Account Subsidy calculation which relates to rent rebate expenditure, and the **TMO** shall, in exercising its powers under this Agreement, avoid carrying out any actions so notified to it by the Council.
- 6.6 The **TMO** shall comply with instructions from the Council which the Council may reasonably need to give to ensure compliance with obligations imposed by law on the Council or the **TMO**.
- 6.7 Nothing in this Agreement shall be interpreted as requiring the Council to act beyond its powers or contrary to any restriction on its powers. This clause shall prevail over any other clause in this Agreement with which it conflicts.

7 Insurance

7 *(Option A: The Council retains insurance responsibility).*

- 7.1 The Council shall insure the following risks should it consider it appropriate to effect insurance cover:

(Drafting note: list here the risks falling on the Council which the Council may wish to insure, for example:

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

7.2 If the Council considers that it is not appropriate to insure certain of the risks listed in clause 7.1, but to carry those risks itself, the Council shall remain liable for those risks and shall not pass the costs which arise from not insuring those risks on to the **TMO**. In particular the Council shall remain liable for the costs of repairs arising out of risks normally covered by buildings insurance notwithstanding the delegation of responsibility for those repairs to the **TMO** in chapter 2 of this Agreement.

7.3 *(multi modular clause to specify the insurance risks the **TMO** is required to cover).*

7.3 The **TMO** shall maintain insurance with an insurance company or society of repute approved by the Council, which approval shall not be unreasonably withheld or delayed, in such total sum insured as the Council may reasonably require against the following risks arising out of its responsibilities as Managing Agent of the **Property** under this Agreement:

*(Drafting note: omit or add insurance requirements appropriate to the responsibilities delegated to the **TMO** under this Agreement).*

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

7 Insurance

7 *(Option B: the **TMO** arranges insurance as the Council's agent. Multi modular clauses to specify the insurance the **TMO** must take out to cover the risks the Council wishes the **TMO** to insure. The alphabetic lists in clauses 7.1 and 7.3 are given for illustration only and should be amended as necessary to ensure that the **TMO**'s responsibility for insurance is clearly stated. This option is only for large **TMOs** in excess of 2,500 units where the extent of delegated responsibility is such that it may be appropriate for all insurance in respect of the **Property** to be arranged by the **TMO**).*

7.1 The **TMO** shall as agent for the Council arrange insurance with an insurance company or society of repute approved by the Council, which approval shall not be unreasonably withheld or delayed, in such sum insured as the Council may reasonably require to cover the following risks in relation to the **Property**:

*(Drafting note: list here the risks the Council wishes the **TMO** to insure as its agent, for example:*

- a) damage to the structure of the **Property** (buildings insurance);*
- b) claims by third parties arising out of risks in or on the **Property** (public liability insurance);*
- c) claims by employees of the Council working in or on the **Property** (employer's liability insurance);*
- d) the loss through fire or theft of property belonging to the Council in or on the **Property** (contents insurance);*
- e) such other risks as the Council may from time to time reasonably require.)*

7.2 If the Council considers that it is not appropriate to insure the following risks, but to carry the risk itself, the Council shall remain liable for those risks and shall not pass the costs which arise from not insuring those risks on to the **TMO**. In particular the Council shall remain liable for the costs of repairs arising out of risks normally covered by buildings insurance notwithstanding the delegation of responsibility for those repairs to the **TMO** in chapter 2 of this Agreement.

(Drafting note: list here risks the Council considers that it is not appropriate to insure, and which the Council shall bear).

7.3 *(multi modular clause to specify the insurance risks the **TMO** is required to cover).*

7.3 The **TMO** shall maintain insurance with an insurance company or society of repute approved by the Council, which approval shall not be unreasonably withheld or delayed, in such total sum insured as the Council may reasonably require against the following risks arising out of its responsibilities as Managing Agent of the **Property** under this Agreement:

*(Drafting note: omit or add insurance requirements appropriate to the responsibilities delegated to the **TMO** under this Agreement).*

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

8 Confidentiality

- 8.1 The **TMO** shall treat all information about tenants, leaseholders and freeholders in the **Property** which it obtains or has access to because of this Agreement as strictly confidential. The **TMO** shall use such information only for the purpose of fulfilling its responsibilities under this Agreement and shall 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.
- 8.2 The Council shall also treat all information about tenants, leaseholders and freeholders in the **Property** as strictly confidential save in so far as it is necessary for the Council to use such information in the fulfilment of its statutory duties.
- 8.3 In fulfilling their respective duties and responsibilities under this Agreement both the Council and the **TMO** shall register if necessary as data users and comply with the requirements of the Data Protection Act 1984.

9 Equal Opportunities

- 9.1 The **TMO** shall operate equal opportunities policies and procedures in all aspects of its work as Managing Agent of the **Property**. By implementing equal opportunities policies and procedures the **TMO** shall ensure that it does not discriminate against any person on the grounds of race, ethnic origin, disability, nationality, gender, sexuality (lesbians/gay men), age, class, appearance, religion, responsibility for dependants, unrelated criminal convictions, being HIV positive or having AIDS, or any other matter which causes any person to be treated with injustice.

- 9.2 A statement of the **TMO's** Equal Opportunities Policy and Procedures (the "**Equal Opportunities Policy and Procedures**") forms Appendix 2 to this chapter. The **TMO** agrees to provide a copy of the statement to:
- a) every member of the **TMO**;
 - b) every applicant for housing in the **Property**; and
 - c) any other person who may request a copy upon payment of a reasonable charge to cover the cost of providing them with a copy of the statement.
- 9.3 The **TMO** shall keep proper records of the implementation of its **Equal Opportunities Policies and Procedures** in all aspects of its work as Managing Agent of the **Property** including:
- a) the letting of vacant dwellings and the admission of members;
 - b) the employment of staff;
 - c) committee membership;
 - d) racial or other harassment and tenancy disputes;
 - e) the appointment of and employment of contractors or consultants; and
 - f) the delivery of services to members of the **TMO**.

10 Training and Information

- 10 So that the **TMO** has the necessary skills and knowledge to fulfil its responsibilities under this Agreement the **TMO** shall ensure that its members, committee members and staff have access to training opportunities, including training in:
- a) the content and structure of its rules, committee skills and democratic decision making;
 - b) the principles of equality of opportunity and the equal opportunities policies and practices of the **TMO**;
 - c) the responsibilities of the **TMO** under this Agreement and how properly to fulfil them within the performance standards it contains; and,
 - d) the skills required in order to enable the **TMO** to fulfil its responsibilities.

11 Conflicts of Interest

- 11.1 For the purpose of this clause a person has a personal interest in a matter if they or a close relative;
- a) will benefit from the grant of a tenancy or contract of employment;
 - b) are the proprietor or are directly involved in the management of a business which will benefit from the grant of a contract by the **TMO**;
 - c) are personally involved in a dispute or disagreement which is the matter under consideration.
- 11.2 The **TMO** shall ensure, whether through its rules, standing orders or otherwise, that if in carrying out the duties of the **TMO** under this Agreement a committee member, officer or employee of the **TMO** has a personal interest in any matter that person shall declare the personal interest they have in the matter. The **TMO** shall further ensure that where such a declaration is made, the person making the declaration shall not take part in the decision on that matter and shall withdraw from any meeting at which the matter is to be considered. The **TMO** shall, in reaching its decision on the matter, ensure that corrupt undue or unfair personal gain is avoided.
- 11.3 The **TMO** shall take such steps as are necessary to ensure that once each year, before the first committee or general meeting after the **TMO's** annual general meeting, committee members and officers of the **TMO** shall declare their personal business interests to the secretary of the **TMO** who shall record the interest declared in a register kept for that purpose. This register of interests shall be kept at the **TMO's REGISTERED OFFICE** and shall be open to inspection by any member or officer of the Council, member of the **TMO**, or member of the public during the **TMO's** normal office hours on reasonable notice or at such other times as the Council may reasonably require.

12 Right to Represent

- 12 Subject to the **TMO** having the consent of the tenant, leaseholder or freeholder concerned, the Council recognises the right of the **TMO** to act as that person's representative in dealings with the Council.

13 Council's Right of Access to the Property

- 13.1 The Council shall have the right at all times on giving written notice to the **TMO**, (except in emergency when immediate access without notice is reasonably required), to enter upon the **Property** (with or without employees or contractors) for the purpose of inspection or to carry out its duties under this Agreement or any statute binding upon the Council. The written notice from the Council exercising the right of access under this clause shall be served on the **TMO** within a reasonable time and not less than five days

before access is required. Nothing in this clause gives the Council the right to enter any tenanted part of the Property unless permitted under the relevant tenancy agreement.

- 13.2 In exercising its right of access under this clause the Council shall cause as little disturbance, nuisance, or annoyance to residents in the **Property** as is possible and shall make good to the **TMO's** reasonable satisfaction any damage caused in exercising this right.

14 Clauses not Included, Headings and References

- 14.1 Where a numbered clause or clause in this agreement has the words "clause not included" this serves only to show that an optional clause in the **Modular Management Agreement** has been omitted and to keep the numbering of clauses in this Agreement the same as in the **Modular Management Agreement**.
- 14.2 Headings to clauses, explanatory notes and lists which appear in italics are for guidance only and do not form part of this Agreement.
- 14.3 References to Acts of Parliament and Statutory Instruments are references to those Acts or Statutory Instruments as amended or replaced from time to time.

15 Meanings

- 15 In all clauses of this Agreement, the following words have the meanings stated in this clause:
- a) "day" means a calendar day;
 - b) "tenant" means a periodic or fixed term tenant other than a leaseholder;
 - c) "leaseholder" means a person holding a lease of more than 21 years,
 - d) "freeholder" means a person owning the freehold of any property,
 - e) "management committee" means the body of persons charged with the management of the **TMO** whether called a committee, board of directors or otherwise,
 - f) "member" means a member or shareholder as appropriate,
 - g) "committee member" means a member of the management committee; and
 - h) "working day " means any day other than a Saturday, Sunday, or bank holiday.

16 Decision to Continue this Agreement

- 16.1 At each Annual General Meeting after the second anniversary of the **STARTING DATE**, the **TMO** shall consider a resolution to the effect that it wishes to continue managing the **Property** under the terms of this Agreement. Should such a resolution be rejected by a vote at the Annual General Meeting, the **TMO** shall forthwith convene a Special General Meeting to consider the giving of the three months notice of termination of this Agreement under the provisions of clause 19.2.4 below.
- 16.2 The **TMO** shall, not less than once every five years, consult with all tenants and leaseholders in the **Property** to seek their opinion concerning the continuation of this Agreement. The consultation, which shall be in the form of a secret ballot or questionnaire on which the identity of the respondent is not revealed, shall establish:
- a) opinion as to the effectiveness of the **TMO** as manager of the **Property**; and
 - b) whether the majority of those responding and/or the majority of secure tenants responding wish the **TMO** to continue as manager of the **Property** under this Agreement.
- 16.3 The **TMO** shall inform the Council of the result of any consultation exercise under clause 16.2 above within 21 days of the date of the ballot or closing date for the return of questionnaires. If the majority of those voting in the ballot or responding to the questionnaire or a majority of secure tenants voting or responding to the questionnaire do not wish the **TMO** to continue as manager of the **Property** the **TMO** shall at the same time give notice under the provisions of clause 19.2.4 below of its intention to end this Agreement.

17 Variations to this Agreement

- 17.1 This Agreement may be varied in the following ways:
- a) by the **TMO**:
 - i) having obtained, from a person who is an Approved Person under the **Regulations** (the "**Approved Person**"), certification that the **TMO** has the required level of competence for each of the additional or higher levels of responsibility provided for in the optional clauses of the **Modular Management Agreement** the **TMO** wishes to take on and that, in the opinion of the **Approved Person**, it is reasonable for the **TMO** to vary this Agreement as proposed, and
 - ii) thereafter, having given the Council 4 months written notice that it has decided by a majority vote at a general meeting to take on additional or higher levels of responsibility provided for in the optional clauses of the **Modular Management Agreement**

in which case this Agreement shall be varied as agreed or settled by the dispute procedure at chapter 6, clause 16 by adopting the options appropriate to the additional or higher levels of responsibility.

- b) by the **TMO**, giving the Council not less than 4 months written notice that it has decided by a majority vote at a general meeting to return responsibility for a task set out in this Agreement to the Council or to take on a lower level of responsibility in relation to that task provided for in the optional clauses of the **Modular Management Agreement** and the Agreement shall be varied as agreed or settled by the dispute procedure at chapter 6, clause 16 by adopting the options appropriate to the lower level of responsibility; or
- c) by the Council and the **TMO** agreeing to replace or amend the appendices of this Agreement provided that the contents of the new or amended appendices conform to the checklists in the appendices of the **Modular Management Agreement**; or
- d) by the Council and the **TMO** agreeing to vary the Agreement by selecting different options from the **Modular Management Agreement** provided that the new options do not give the **TMO** additional or a higher level of responsibility; or
- e) where the Secretary of State modifies the **Modular Management Agreement** by the **TMO** or the Council giving notice to the other party requesting that the relevant provisions in this Agreement be replaced by the modified provisions in the **Modular Management Agreement** with effect from the date specified in the notice.

17.2 Variations under the provisions of clauses 17.1 a) to e) above shall be effected by a Deed of Variation signed and sealed by the Council and the **TMO** and shall come into effect at the date specified in the said Deed of Variation. The Deed of Variation shall state the adjustment to the **ALLOWANCES**, if any, arising from the variation made.

17.3 Nothing in this clause shall prevent the number of dwelling houses in the **Property** being reduced or the **TMO's** responsibilities in respect of such dwelling houses being changed by tenants in the **Property** exercising the Right To Buy their home under the provisions of Part V of the Housing Act 1985 (the "**Right to Buy**") or by leaseholders exercising the right to enfranchise under the Leasehold Reform, Housing and Urban Development Act 1993 (the "**Right to Enfranchise**") or by any person acquiring any dwellings in the Property under Part IV of the Housing Act 1988 ("**Tenants' Choice**"). Reductions in the number of dwellings, or changes in the responsibilities of the **TMO** arising from any person exercising the **Right to Buy**, the **Right to Enfranchise** or **Tenants' Choice** or any tenant management organisation exercising the **Right to Manage** in a case where Regulation 2(1)(c)(ii) of the **Regulations** applies are automatic variations to this Agreement and shall take place, together with the necessary adjustments to the **ALLOWANCES**, as from the date on which the **Right to Buy**, the

Right to Enfranchise or the **Tenants' Choice** purchase is completed or the relevant provisions of the management agreement under the **Right to Manage** enter into force.

18 Failure to Perform

18.1 Without affecting any other rights the Council may have under this Agreement or at law:

18.1.1 in the event of the **TMO** failing to perform a task or tasks delegated to it under this Agreement in accordance with the performance standards set out in the appendices to the chapters of this Agreement the Council may serve written notice of the breach (a "**Breach Notice**") on the **TMO**;

18.1.2 if the breach is not remedied within 21 days of receipt of a **Breach Notice** (or such other reasonable period specified in the **Breach Notice**) the Council may give further written notice (a "**Warning Notice**") warning the **TMO** that unless the breach is remedied within 7 days the specified task(s) shall be removed from the tasks delegated to the **TMO**;

18.1.3 if the breach is still not remedied within 7 days of the **TMO** receiving the **Warning Notice**, the Council may in writing terminate from a specified date the **TMO's** responsibility for the task(s) referred to in the **Breach Notice** and **Warning Notice** and the **TMO** shall not be permitted to resume responsibility for any task so terminated in accordance with clause 17.1a) until 24 months (or such shorter period as the Council may determine) have elapsed.

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

18.2.1 in the event of the Council failing to fulfil any of its retained landlord functions or its responsibilities under this agreement the **TMO** may serve on the Council a written notice of its failure (a "**Failure Notice**");

18.2.2 on receipt of a **Failure Notice** the Council shall, within 21 days or such other reasonable period specified in the **Failure Notice**, remedy the failure or notify the **TMO** in writing why the Council cannot remedy the failure and details of the earliest reasonable date upon which the failure shall be rectified.

18.3 In the event of any task or tasks being taken back by the Council under the terms of clause 18.1 above the **ALLOWANCES** payable to the **TMO** (see chapter 4, clause 1) shall be reduced by an amount which reflects the reduced responsibilities delegated to the **TMO** and which is calculated in accordance with the calculation in Appendix 1 of chapter 4.

19 Ending the Agreement

19.1 This Agreement shall continue until ended in one of the ways set out in this clause.

19.2 This Agreement shall end:

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

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

19.2.2 if the **TMO** (having passed a resolution to end this Agreement at a duly convened General Meeting) and the Council agree in writing that it shall end on a specified date;

19.2.3 if the **TMO** (having passed a resolution to end this Agreement at a duly convened General Meeting) gives the Council not less than 3 months written notice that the Agreement shall end on an anniversary of the **STARTING DATE**;

19.2.4 if the **TMO**, having failed to secure a mandate to continue as manager of the **Property** under the provisions of clause 16 above, gives the Council 3 months written notice to end this Agreement;

19.2.5 on the expiry of 3 months written notice given to the **TMO** by the Council if the **TMO** has received a **Breach Notice** from the Council under the provisions of clause 18.1 above, and either:

- i) the **TMO** has failed to remedy the breach or initiate the necessary action to remedy the breach to the reasonable satisfaction of the Council, or
- ii) the **TMO** has not taken the necessary steps to return responsibility for the relevant task to the Council under clause 17.1 (b) above

provided that the **TMO** may before the notice expires serve a counter-notice on the Council stating that the breach is minor and does not in itself or considered in conjunction with previous breaches constitute sufficient grounds for ending the Agreement and the Council shall give reasoned consideration to withdrawing its notice;


- 19.2.6 except where clause 19.2.7 applies, on the date the Council sells or transfers its interest in the **Property** provided that the Council has given the **TMO** not less than 6 months written notice of its intention to do so;
- 19.2.7 on the date a **Right to Enfranchise** or a **Tenants' Choice** purchase is completed if the **TMO** has given the Council as much written notice as is reasonably practicable that the reduction in the number of dwellings or the change in responsibilities is such that the **TMO** wishes to end the Agreement.
- 19.3 Any notice to end this Agreement shall expire on the last day of a month unless given under clause 19.2.3 above.
- 19.4 If this Agreement ends the Council shall, within one month of the ending of this Agreement, give written notice to the Secretary of State for the Environment of the date on which this Agreement ended.
- 19.5 The ending of this Agreement shall not affect any rights or liabilities of the **TMO** or the Council which may have arisen under this Agreement before the date on which it ends and any obligations to take any action once the Agreement ends shall continue to have effect. In particular the obligations in the following clauses shall remain in force:
- a) chapter 3, clause 11: the payment of rent and services charges collected;
 - b) chapter 4, clause 8: the payment of the balance of funds;
 - c) chapter 6, clause 1: the indemnity in respect of staff;
 - d) chapter 6, clause 15: the general indemnities.
- 19.6 If this Agreement ends the **TMO** shall hand over to the Council such information and records as the Council may reasonably require for the future management of the **Property**.

CHAPTER 1


APPENDIX 1

Property

PART 1


-  List of dwellings (by postal number and addresses) and statement of the tenure of those dwellings which are managed under the terms of this Agreement at the **STARTING DATE** or at subsequent dates as set out in clause 5.1

PART 2

-  Land and buildings (which may be additional to the dwellings listed in Part 1) marked on the plan annexed to this Appendix and described as follows:

(descriptions and references to colours on plan)

PART 3

-  A list of equipment and other items owned by the Council which the TMO may use and has responsibility for under this agreement.

APPENDIX 2

Equal Opportunities Policy and Procedures

CHECKLIST

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.

1 Statutory Obligations and Equal Opportunities Aims

List of relevant equal opportunities legislation governing activities of the TMO

For example:

- *Race Relations Act 1976*
- *Sex Discrimination Act 1975*
- *Equal Pay Act 1970*
- *Disabled Persons (Employment) Acts 1944 and 1953*
- *Rehabilitation of Offenders Act 1974*
- *Health and Safety at Work Act 1974*
- *Employment Protection Act 1975*
- *Employment Protection (Consolidation) Act 1978*

List of the aims and objectives of the TMO equal opportunities policy including the equal opportunity target groups the policy will seek to address

For example:

- *people with mental or physical disabilities*
- *gay men and lesbians*
- *black and other ethnic minority groups*
- *religious groups*
- *people without formal qualifications*
- *people whose first language is not English*
- *women*
- *single parents*
- *people with responsibility for dependents*
- *people who are HIV positive*
- *ex-offenders*
- *people who do shift work/work nights*
- *the homeless*
- *people with mental health problems or a history of mental health problems*
- *people with other health problems*
- *young people*
- *old people*

- *the unemployed/those on low incomes*

2 Achieving Equal Opportunities Objectives

Procedures for ensuring that the TMO is representative, democratic and accountable

For example:

- *who is eligible to become a member*
- *where and how the opportunity to become a member and the obligations and benefits of membership are published and promoted*
- *link to Nominations Procedure and/or other relevant TMO procedures*
- *what decisions must be taken/approved by general meeting (as opposed to being delegated to Management and Sub-committees)*

Procedures for promoting and encouraging active membership of the TMO from all individuals and sections of the community

For example:

- *details of information and training to be provided to new and prospective members*
- *the TMO's expectations of its members to abide by the Equal Opportunities policy*
- *how and where details of meetings and other events will be publicised and promoted*
- *who is eligible to attend meetings*

Obligations to provide information about the TMO and its activities

For example:

- *details of information to be provided and to whom*
- *details of who should receive minutes of general, management and sub-committee meetings)*
- *the form and the availability of information such as translations, braille, tapes*
- *how regularly particular information is to be provided*

Commitments to consultation and participation

For example:

- *procedures for ensuring that all relevant residents are consulted and that everyone has the opportunity to participate*
- *link to other TMO policies which specify consultation arrangements*
- *how meetings and other events will be organised to ensure that all needs are catered for and that everyone has the opportunity to attend*
- *how residents will be kept informed of the results of any consultation exercise or the outcome of general or open meetings*
- *the conduct of meetings and how individuals will be expected to behave*

Management Committee composition and Equal Opportunities obligations

For example:

- *how the Annual General Meeting and elections to the management committee will be run, publicised and promoted*
- *any steps to be taken to ensure that the composition of the Committee reflects the population of the estate/area as a whole*
- *training/induction to be made available to the management committee*
- *any relevant links to a Code of Conduct for Committee members and its implications for Equal Opportunities*
- *duties of Committee members including tackling discrimination within the organisation*
- *liaison with other groups/agencies/organisations to further the TMO's equal opportunities objectives*

How breaches of policies and procedures will be handled

For example:

- *how breaches will be dealt with*
- *link to disputes and complaints procedures*
- *how formal investigations will be conducted, who by and who they will report to*
- *sanctions available*

How the TMO intends to ensure that it achieves its equal opportunities objectives in delivering its services

For example by reference to other sections of the management agreement and TMO policies and procedures covering:

- *tenancy/leasehold management (including harassment and domestic violence considerations and neighbour disputes)*
- *allocations/lettings (including monitoring arrangements per type of property, quality of property, area etc)*
- *repairs & major works*
- *local office responsibilities and opening times*
- *rent collection and arrears*
- *consultation and participation*
- *reports*

Details of actions to be taken by the organisation to ensure that it fulfils its equal opportunities objectives in respect of the recruitment and employment of staff

For example:

- *advertising*
- *recruitment & selection*

- *access to training*
- *career development*
- *job descriptions and person specifications*
- *conditions of service*
- *employment practices*
- *working conditions*
- *disciplinary and appeal procedures*



Details of actions to be taken by the organisation to ensure that it fulfils its equal opportunities objectives in respect of the hiring of contractors and other agencies

For example:

- *advertising/tendering contracts*
- *contract terms and conditions such as method statements which reflect special needs*
- *information required of contractor/agency such as equal opportunities statements, health and safety policies*
- *selection procedures*

3 Monitoring



Details of monitoring and review of equal opportunities policies and procedures

For example:

- *purpose of monitoring process*
- *what information/data is needed*
- *how information will be collected*
- *any data to be collected from members of the organisation such as*
 - *race and ethnic origin*
 - *age - in bands*
 - *gender*
 - *responsibility for dependents*
 - *physical disability, nature of*
 - *main language spoken*
 - *special needs: creche, women only meetings, day-time meetings*
- *how often such data is to be monitored*
- *how the data is to be used*
- *steps to be taken to ensure confidentiality and prevent abuse*
- *frequency of monitoring*
- *reports - to whom and in what form*
- *how action will be agreed in the light of monitoring results:*
- *process for agreeing amendments to equal opportunities policy*
- *annual action plans (identification of issues which need to be addressed and equal opportunity target groups; strategies for addressing them including targets, tasks, resources to be allocated and timetable; process for monitoring and mid-year review.)*

APPENDIX 3

PART 1

Services which are not housing management functions within Section 27 of the Housing Act 1985 and which the TMO has contracted to carry out

PART 2

Performance Standards for tasks in Part 1

ANNEX A

Copy of the TMO's Constitution

CHAPTER 2

REPAIRS, MAINTENANCE AND SERVICES PROVISION

1 Routine Day to Day Repair responsibilities delegated to the TMO

1 *(Option A: clause not included, no repair responsibilities delegated to the TMO).*

1.1 Clause not included.

1 Routine Day to Day Repair responsibilities delegated to the TMO

1 *(Option B: responsibility for routine day to day repairs, as specified in multi modular Appendix 1 is delegated to the TMO. The TMO may take on any repair responsibility it wishes providing the division of repair responsibility between the Council and the TMO, set out in Appendix 1 and Appendix 2, is sensible. Optional clause 1.4 enables the TMO to take on structural repairs below specified cost limit).*

1.1 Subject to clauses 7 and 8 below and the arrangements for **Major Works** in clause 6 of this chapter, the Council delegates to the **TMO** responsibility for the day to day repairs to the **Property** listed in Appendix 1 to this chapter.

1.2 Nothing in this clause shall impose upon the **TMO** a duty 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 a duty to repair, redecorate or maintain it and provided that the cost of so doing does not exceed the cost of carrying out the equivalent repair to the fitting, fixture or appliance provided by the Council; or

1.2.2 any part of the **Property** or any fixture, fitting or appliance in the **Property** which is in need of repair or maintenance because of any defect in the design or construction of the **Property** or the manufacture of any fitting, appliance or component part (unless funds for such repairs have been included in the **ALLOWANCES**, see chapter 4 clause 1); or

1.2.3 any part of the **Property** or any fixture, fitting or appliance which is the responsibility of a tenant, leaseholder or freeholder under their tenancy, lease or freehold transfer.

1.3 The **TMO** shall also be responsible for making good any damage or for repairs to the **Property** (including redecoration) which may be needed as a result of the **TMO** fulfilling the repair and maintenance responsibilities delegated to it by this clause.

1.4 *(Optional clause, use only if the Council retains structural repair responsibilities under clause 2).*

1.4 The **TMO** shall also be responsible for any repairs to the structure of the **Property** which fall within the Council's repairing obligations in clause 2.1 below where the anticipated cost of the repair, shown by the lowest of three quotations obtained by either the **TMO** or the Council in advance of the repair being ordered, is less than £1,000 (or such other greater sum as the Council and the **TMO** may agree in writing).

2 Repair Responsibilities retained by the Council

2 *(Option A: the Council retains all repair obligations. Link - use only where the **TMO** takes on no direct repair responsibilities under clause 1).*

2.1 The Council retains the responsibility for all repairs to the **Property**.

2 Repair Responsibilities retained by the Council

2 *(Option B: standard clause with multi-modular appendix listing repair responsibilities retained by the Council).*

2.1 The Council retains all repair responsibilities in respect of the **Property** not specifically delegated to the **TMO** in clause 1 above or specifically the responsibility of any tenant, freeholder or leaseholder under his or her tenancy, freehold transfer or lease. The repair responsibilities retained by the Council include those listed in Appendix 2 to this chapter.

2.2 The Council shall also be responsible for making good any damage or for repairs (including redecoration) to any part of the **Property** which may be needed as a result of the Council fulfilling its retained repairing obligations.

3 The Rights of the TMO and the Council in the Event of Failure to Repair

3.1 In carrying out repairs under clause 1, the **TMO** shall meet the standards and timescales set out in Appendix 1 to this chapter.

3.2 In carrying out repairs under clause 2, the Council shall meet the standards and timescales set out in Appendix 2 to this chapter.

3.3 If, in the opinion of the **TMO**, the Council is in breach of the Council's retained repairing obligations or the standards and timescales set out in Appendix 2, the **TMO** may notify the Council in writing of the repair required (a "**Repair Notice**").

- 3.4 If the **TMO** is in breach of the **TMO's** delegated repairing responsibilities or the standards and timescales set out in Appendix 1, the Council may notify the **TMO** in writing of the repair required (a "**Repair Notice**").
- 3.5 If a **Repair Notice** is served on the Council by the **TMO** (see clause 3.3) or on the **TMO** by the Council (see clause 3.4) the repair shall be carried out:
- 3.5.1 within 48 hours of receipt of the **Repair Notice** if the repair is an emergency repair (namely a repair which causes immediate danger to a building structure in the **Property** or to the health, safety or physical security of any tenant, leaseholder or freeholder or other proper user of the **Property**) such as plumbing leaks, the failure of the supply of water, gas or electricity, the lack of space heating during the heating seasons or the failure of the hot water supply; or
- 3.5.2 within 7 days of receipt of the **Repair Notice** if the repair is an urgent repair (namely a repair other than an emergency repair which unless attended to will cause damage to a building structure in the **Property** or seriously impair the right of a tenant, leaseholder or freeholder to quiet enjoyment of their dwelling); or
- 3.5.3 within one month of receipt of the **Repair Notice** if the repair is a routine repair (namely all other repairs which are not emergency or urgent repairs).
- 3.6 If having received a **Repair Notice** a repair is not completed within the timescales set out in clause 3.5 above the Council (if the **TMO** is in breach of its repairing obligations) or the **TMO** (if the Council is in breach of its repairing obligations) shall have the right:
- a) if the repair is an emergency repair to carry out the repair and recover from the other any costs reasonably incurred in carrying out the repair; or
- b) to serve written notice (a "**Final Repair Notice**") requiring that the outstanding repair be completed.
- 3.7 If having served a **Final Repair Notice**:
- a) an urgent repair is not completed within 4 days; or
- b) a routine repair is not completed within 14 days;

and in either case a written response has not been received within the timescales in a) or b) above giving reasons why the repair could not reasonably be carried out within the timescales in Appendix 1 or 2 to this chapter and details of when it is intended that the repair shall be carried out, then the party which served the **Final Repair Notice** may without further notice proceed to carry out the repair and recover from the other any costs reasonably incurred in carrying out the repair.

4 The Council's Right to Initiate Major Works

- 4.1 The Council retains the right to draw up proposals for cyclical redecoration and associated repairs, structural repairs, renewal of components fixtures or fittings, and or improvements to the **Property** ("**Major Works**") if it considers them to be necessary or desirable.
- 4.2 If the Council decides that **Major Works** are necessary or desirable the Council shall inform the **TMO** and provide the **TMO** with details of the Council's proposals.
- 4.3 The **TMO** shall consult with tenants, leaseholders and freeholders over **Major Works** proposals, unless the Council is undertaking consultation under the terms of clause 14 of chapter 6 of this Agreement.
- 4.4 The Council shall give proper consideration to the **TMO's** response to **Major Works** proposals and to any changes which the **TMO** may suggest.

5 The TMO's Right to Initiate Major Works

- 5.1 The **TMO** may request the Council to draw up proposals for **Major Works** under clause 4.1.
- 5.2 Each year the Council shall advise the **TMO** of the information the Council needs to consider a request under clause 5.1 and the timetable for such requests to be considered.
- 5.3 Before submitting a request under clause 5.1, the **TMO** shall consult any tenants, leaseholders and freeholders who may be affected by the proposed **Major Works**. In finalising its request the **TMO** shall take into account any comments tenants, leaseholders or freeholders may make.
- 5.4 The Council shall give full and fair consideration to a request under clause 5.1. In deciding whether to accept the request, the Council shall give equal consideration to the need for repairs and/or improvements to the **Property** as it gives to the need for repairs and/or improvements to other properties in the Council's housing stock.

6 Major Works

- 6 *(Option A: The Council retains responsibility for **Major Works** but has the obligations to liaise with the **TMO** in carrying out **Major Works**).*
- 6.1 If the Council intends to undertake **Major Works**, the Council shall consult the **TMO** about its proposals (including the nature and scope of the works, the proposed contract

terms and conditions and the methods by which it intends that the works should be carried out). The **TMO** may request the Council to amend its proposals or to include specific terms and conditions in contracts for the **Major Works**. The Council shall give reasoned consideration to any response the **TMO** may make to consultation under this clause. Where the Council has reason for not complying with a request the **TMO** makes in response to consultation the Council shall, as soon as practicable, give the **TMO** a written explanation as to why the Council cannot comply with the **TMO's** request.

6.2 Before inviting tenders for the proposed **Major Works**, the Council shall send to the **TMO** for approval details of:

- a) the **Major Works** proposed;
- b) the intended programme for the **Major Works**;
- c) the access arrangements required for the **Major Works**; and
- d) the contractors from whom the Council intends to invite tenders for the **Major Works**.

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

- a) the tenders received for the **Major Works**;
- b) the contractor whose tender 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 shall not commence **Major Works** without approval and the **TMO** shall not unreasonably withhold or delay approval to a request from the Council to approve **Major Works**.

6 Major Works

6 *(Option B: Council retains responsibility for drawing up **Major Works** specifications and tendering **Major Works** but appoints the **TMO** as its agent to supervise **Major Works** contracts).*

6.1 If the Council intends to undertake **Major Works** the Council shall consult the **TMO** about its proposals (including the nature and scope of the works, the proposed contract terms and conditions and the methods by which it intends that the works should be carried out). The **TMO** may request the Council to amend its proposals or to include specific terms and conditions in the contract for the **Major Works**. The Council shall give reasoned consideration to any response the **TMO** may make to consultation under this clause. Where the Council has reason for not complying with a request the **TMO**

makes in response to consultation, the Council shall, as soon as practicable, give the **TMO** a written explanation as to why the Council cannot comply with the **TMO's** request.

- 6.2 Before inviting tenders for **Major Works** the Council shall submit to the **TMO** for approval details of:
- a) the **Major Works** proposed;
 - b) the intended programme for the **Major Works**;
 - c) the access arrangements required for the **Major Works**; and
 - d) the contractors from whom the Council intends to invite tenders for the **Major Works**.
- 6.3 Within 28 days of receiving tenders for **Major Works** the Council shall submit for the **TMO's** approval details of:
- a) the tenders received for the **Major Works**;
 - b) the contractor whose tender 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 shall not invite tenders or let a contract for **Major Works** without approval and the **TMO** shall not unreasonably withhold or delay approval.
- 6.5 The Council shall appoint the **TMO** as its agent for the supervision of contracts for **Major Works**. In fulfilling its supervisory obligations under this clause the **TMO** shall comply with the performance standards for supervising contracts for **Major Works** set out in Appendix 3 to this chapter.
- 6.6 To enable the **TMO** to fulfil its obligations under this clause the Council shall, immediately a contract for **Major Works** is let, provide the **TMO** with a copy of the specification and contract for the works and any other information the **TMO** may reasonably require to carry out its supervisory responsibilities.
- 6.7 If, in supervising a **Major Works** contract under the terms of this clause, it becomes evident that works in addition to those specified in the **Major Works** contract are required the **TMO** shall 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 **TMO** shall take such action as the Council may reasonably require including, if necessary, supervising the additional **Major Works** required.

6 Major Works

- 6 *(Option C: responsibility for Major Works within the budget for Major Works contained within the ALLOWANCES is delegated to the TMO).*
- 6.1 If the Council has, at its discretion in accordance with the methodology for calculating the ALLOWANCES payable to the TMO (see chapter 4 clause 1), made provision within the ALLOWANCES for the TMO to carry out the Major Works to the Property set out in Appendix 4 to this chapter, the TMO shall carry out those Major Works.
- 6.2 If the TMO reasonably considers that the provision within the ALLOWANCES is insufficient to carry out some or all of the Major Works for which that provision has been made, the TMO may, before starting those works, notify the Council that it considers that provision to be insufficient. The Council shall, as soon as is practicable within the Council's procedures, give consideration to increasing the provision within the ALLOWANCES for those Major Works, and shall notify the TMO of the results of its consideration. If the Council proposes to increase that provision, the TMO shall notify the Council whether it considers that increased provision sufficient, and if it does notify the Council that it considers that increased provision sufficient the TMO shall carry out those Major Works and the ALLOWANCES shall be adjusted to include that increased provision. If the Council does not propose to increase that provision, or if the TMO notifies the Council that it does not consider an increased provision to be sufficient the TMO shall not be under an obligation to carry out those Major Works and the ALLOWANCES shall be reduced accordingly.
- 6.3 At the appropriate time for the TMO to carry out Major Works in accordance with the schedule of Major Works in Appendix 4 to this chapter, the TMO shall submit to the Council for approval details of:
- a) the Major Works the TMO intends to undertake;
 - b) the intended programme for the Major Works;
 - c) the access arrangements required for the Major Works; and
 - d) the contractors from whom the TMO intends to invite tenders for the Major Works.
- 6.4 Within 28 days of receiving tenders for the Major Works the TMO shall submit to the Council for approval details of:
- a) the tenders received for the Major Works;
 - b) the contractor whose tender the TMO intends to accept for the Major Works; and

- c) the date upon which the contractor intends to commence the **Major Works**.
- 6.5 The **TMO** shall not invite tenders or let a contract for **Major Works** without approval from the Council. The Council shall not unreasonably withhold or delay approval. In fulfilling its obligations under this clause the **TMO** shall comply with the performance standards for letting and supervising contracts for **Major Works** set out in Appendix 3 to this chapter.
- 6.6 The Council shall not carry out any **Major Works** set out in Appendix 4 to this chapter.

7 Replacement Responsibilities

*(Standard clause with option to omit: omit only if clause 6 option C has been chosen and total responsibility for replacement is delegated to the **TMO** under clause 6 and the costs to the **TMO** of taking on the obligation to carry out planned maintenance and replacement of components in the **Property** which have reached the end of their useful life has been duly allowed for in the **ALLOWANCES**).*

- 7.1 Except insofar as delegated to the **TMO** under clause 6 above, the Council shall retain responsibility for the replacement and renewal (whether as part of a planned maintenance programme or otherwise) of all component parts of buildings in the **Property** which have reached the end of their useful life or which require replacement in order to ensure the safety of persons using the **Property** or to modernise and improve the housing in the **Property**.
- 7.2 Replacement in clause 7.1 does not include the replacement of any component as part of a routine repair. The replacement of a component shall not be considered part of a routine repair where the **TMO** can show that other components in the **Property** similar to the component in need of replacement have also reached the end of their useful life.
- 7.3 Components the replacement of which may be considered part of a routine repair include:
- a) taps and stopcocks;
 - b) leaking water supply and waste pipework;
 - c) opening window sashes;
 - d) door and window ironmongery;
 - e) cistern ballcocks;
 - f) kitchen units and worktops (of existing units);
 - g) central heating radiators and pumps; and/or

- h) electrical switches, socket outlets and fittings.

8 Repairs arising from Events Covered by the Council's Buildings Insurance

- 8 *(Option A: the Council retains responsibility for making claims for repairs arising from events covered by the Council's insurance and retains the responsibility for such repairs).*
- 8.1 The Council shall retain responsibility for administering all insurance claims for 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 Council's buildings insurance or which would normally be covered by building insurance had the Council not decided to cover such risks itself ("**Insurance Repairs**"), (see chapter 1 clause 7).
- 8.2 **Insurance Repairs** shall be excluded from the **TMO's** repair obligations in clause 1. The Council shall retain responsibility for carrying out and supervising **Insurance Repairs**.
- 8.3 As soon as practicable after the **STARTING DATE** the Council shall provide the **TMO** with a simple guide as to the types of repairs which are **Insurance Repairs** and the action needed to avoid invalidating insurance claims, particularly if a dwelling in the **Property** is void and left vacant for more than one month.
- 8.4 Immediately the **TMO** becomes aware that an **Insurance Repair** to the **Property** is needed, the **TMO** shall notify the Council in writing that an **Insurance Repair** is required.
- 8.5 If the Council receives a notice from the **TMO** under clause 8.4 or is otherwise aware that an **Insurance Repair** is needed, the Council shall take all reasonable steps to ensure that:
 - a) any emergency temporary repairs to protect the **Property** or the safety, health or security of tenants and any other persons living in or visiting the **Property** are carried out; and
 - b) that any insurance claim is made and where necessary pursued until approved by the insurer; and
 - c) either:
 - i) the **Insurance Repair** is carried out immediately the claim is accepted by the Insurer, or

- ii) if the **Insurance Repair** relates to a risk the Council elected to cover itself (see chapter 1 clause 7.2), the **Insurance Repair** is initiated within 28 days of the Council becoming aware of the need for the **Insurance Repair**.

8.6 The **TMO** shall, as soon as may be 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 an **Insurance Repair**.

8 Repairs Arising from Events Covered by the Council's Buildings Insurance

8 *(Option B: the Council retains responsibility for making claims for repairs arising from events covered by the Council's insurance, but the **TMO** carries out such repairs if they fall within its repairing obligations).*

8.1 The Council shall retain responsibility for administering all insurance claims for 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 leaking pipes) which are covered by the Council's buildings insurance or which would normally be covered by building insurance had the Council not decided to cover such risks itself ("**Insurance Repairs**") (see chapter 1 clause 7).

8.2 As soon as practicable after the **STARTING DATE**, the Council shall provide the **TMO** with a copy of its buildings insurance policy and a simple guide as to the types of repairs which are **Insurance Repairs** and the action needed to avoid invalidating insurance claims, particularly if a dwelling in the **Property** is void and left vacant for more than one month.

8.3 If the **TMO** considers that a repair which falls within the repairing obligations delegated to the **TMO** (see clause 1 above) is an **Insurance Repair**, the **TMO** shall, immediately the need for the repair becomes known, notify the Council in writing that an **Insurance Repair** is required.

8.4 If the **Insurance Repair** is a repair for which the **TMO** is responsible under clause 1 above, the **TMO** shall not proceed with the repair until authorised to do so by the Council. The Council shall not be required to authorise such repairs until the claim has been accepted by the Council's insurers or authorised by the Council if the Council elected to cover such risks itself (see clause 8.6 below).

8.5 If the Council receives a notice from the **TMO** under clause 8.3 above or is otherwise aware that an **Insurance Repair** is needed the Council shall take all reasonable steps to ensure that:

- a) any emergency temporary repairs to protect the **Property** or the safety, health or security of tenants and any other persons living in or visiting the **Property** are carried out by the Council or that the **TMO** is authorised to carry them out; and

- b) that any insurance claim is made and where necessary pursued until approved by the insurer.
- 8.6 Immediately the **Insurance Repair** is accepted by the Insurer (or within 28 days of being notified of the **Insurance Repair** if the **Insurance Repair** relates to a risk the Council elected to cover itself, see chapter 1 clause 7.2) the Council shall:
- a) if the **Insurance Repair** is a repair for which the **TMO** is responsible under clause 1, authorise the **TMO** to carry out the repair; or
 - b) if the **Insurance Repair** is a repair which is part of the retained repair responsibilities of the Council under clause 2 above, carry out the repair.
- 8.7 Having received authorization to carry out an **Insurance Repair** under 8.6 above and carried out the repair, the **TMO** shall, within 14 days of receipt, submit the invoice for the **Insurance Repair** to the Council for payment. The Council shall be responsible for paying invoices for **Insurance Repairs** and for recovering the cost of **Insurance Repairs** which are covered by the buildings insurance policy for the **Property** from the insurer.
- 8.8 The **TMO** shall, as soon as 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 an **Insurance Repair**.

8 Repairs Arising from Events Covered by the Council's Buildings Insurance

- 8 *(Option C: the **TMO** has delegated responsibility for making claims for repairs arising from events which are covered by the Council's buildings insurance policy).*
- 8.1 The **TMO** shall be responsible for administering all insurance claims for 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 leaking pipes) which are covered by the Council's buildings insurance or which would normally be covered by building insurance had the Council not decided to cover such risks itself ("**Insurance Repairs**") (see chapter 1 clause 7).
- 8.2 As soon as practicable after the **STARTING DATE** the Council shall provide the **TMO** with a copy of its buildings insurance policy and a simple guide as to the types of repairs which are **Insurance Repairs**, the procedures for making claims and the Council's procedure for approving **Insurance Repairs** in respect of risks it has elected to cover itself (see chapter 1, clause 7.2).
- 8.3 If the Council considers that a repair which falls within its retained repairing obligations (see clause 2 above) is an **Insurance Repair** which arises from a risk covered by the Council's buildings insurance policy, the Council shall, immediately the need for the

repair becomes known, notify the **TMO** in writing that an **Insurance Repair** is required.

- 8.4 If an **Insurance Repair** is a repair which arises from a risk covered by the Council's buildings insurance policy and for which the Council is responsible under clause 2 above, the Council shall not proceed with the repair until authorised to do so by the **TMO**. The **TMO** shall not be required to authorise such repairs until the claim has been accepted by the Council's insurers.
- 8.5 If the **TMO** receives a notice from the Council under clause 8.3 or is otherwise aware that an **Insurance Repair** is needed which arises from a risk covered by the Council's buildings insurance policy the **TMO** shall take all reasonable steps to ensure that:
- a) any emergency temporary repairs to protect the **Property** or the safety, health or security of tenants and any other persons living in or visiting the **Property** are carried out by the **TMO** or, if the repair is one for which the Council is responsible under clause 2, that the Council is authorised to carry them out; and
 - b) that the insurance claim is made and where necessary pursued until approved by the insurer.
- 8.6 Immediately the **Insurance Repair** is accepted by the insurer the **TMO** shall:
- a) if the **Insurance Repair** is a repair for which the Council is responsible under clause 2 above, authorise the Council to carry out the repair; or
 - b) if the **Insurance Repair** is a repair for which the **TMO** is responsible under clause 1 above, carry out the repair.
- 8.7 Having received authorization to carry out an **Insurance Repair** under 8.6 above and carried out the repair, the Council shall, within 14 days of receipt, submit the invoice for the **Insurance Repair** to the **TMO** for payment. The **TMO** shall be responsible for paying invoices for **Insurance Repairs** which are covered by the buildings insurance policy for the **Property** and for recovering the cost of **Insurance Repairs** from the insurer.
- 8.8 The Council shall, as soon as practicable after receiving a request from the **TMO**, provide the **TMO** with any information which the **TMO** may reasonably require in order to make or pursue a claim to the Council's insurers for an **Insurance Repair**.
- 8.9 If the **Insurance Repair**:
- a) is a repair which the **TMO** is required to carry out under clause 1 above; and
 - b) relates to a risk the Council has elected to cover (see chapter 1, clause 7.2);

immediately the need for the **Insurance Repair** becomes known to the **TMO** the **TMO** shall seek authorization from the Council to carry out the repair. The **TMO** shall not carry out the repair until it receives authorization, which shall not be unreasonably withheld or delayed.

- 8.10 The **TMO** shall, within 14 days of receipt, submit invoices for **Insurance Repairs** authorised under clause 8.9 above to the Council for payment, and the Council shall pay them within 28 days.

9 Provision of Services by the TMO

*(Standard clause with multi modular appendix. The **TMO** may take on the provision of any service for the **Property** which is part of the Council's management function under s.27 of the Housing Act 1985 providing there is a sensible division of responsibility between the Council and **TMO**).*

- 9.1 The **TMO** shall be responsible for providing the services listed in Appendix 5 to this chapter (the "**TMO's Services**") and complying with the performance standards set out in that Appendix.
- 9.2 The **TMO** shall notify the Council in writing if, for any reason, the **TMO** is unable to provide any of the **TMO's Services** for a period of seven days or more. The notice shall inform the Council of the service the **TMO** is unable to provide, the period of time for which the service will be unavailable and the reason why the **TMO** is unable to provide the service. Service of notice under this clause does not end or alter the **TMO's** obligation to provide the **TMO's Services**.

10 Provision of services by the Council

10 *(Standard clause with multi modular appendix listing the responsibility the Council retains for providing services).*

- 10.1 The Council shall be responsible for providing all services not delegated under clause 9 above which include the services listed in Appendix 6 to this chapter (the "**Council's Services**") and for complying with the performance standards set out in that Appendix.

11 Right to Improve and Leaseholder Improvements

11 *(Option A: Council retains the responsibility for approving or refusing improvement requests).*

- 11.1 If a tenant in the **Property** who has the Right to Improve their dwelling under Section 97 of the Housing Act 1985 or a leaseholder in the **Property** who has the right to improve under the terms of their lease serves notice on the Council (an "**Improvement**

Notice") requesting consent to make improvements the Council shall within 7 days of receiving the **Improvement Notice** inform the **TMO** in writing:

- a) that an **Improvement Notice** has been received; and
- b) the nature of the improvements the tenant or leaseholder intends to make.

11.2 Within 14 days of being informed that an **Improvement Notice** has been received by the Council the **TMO** shall inform the Council in writing whether the **TMO** considers that the Council should:

- a) consent to the improvement proposed; or
- b) refuse consent to the improvement proposed; or
- c) grant consent, subject to stated conditions.

11.3 If the **TMO** considers that consent to the improvement proposed in an **Improvement Notice** should be refused or granted subject to conditions, the **TMO** shall also within the 14 days provided for in clause 11.2 inform the Council in writing of the reasons for the **TMO's** opinion.

11.4 The Council shall give reasonable consideration to the **TMO's** opinion in deciding whether or not to grant consent to the improvement proposed in an **Improvement Notice**. The Council shall as soon as is reasonably practicable give the person who served the **Improvement Notice** and the **TMO** a written statement of its decision and, if it refuses consent or gives consent subject to conditions, the reasons for the refusal or conditions.

11 Right to Improve and Leaseholder Improvements

11 *(Option B: responsibility for considering requests for improvements retained by the Council but improvement notices are served on the TMO).*

11.1 The **TMO** is authorised to receive a notice (an "**Improvement Notice**") served by any tenant in the **Property** claiming the Right to Improve their dwelling under the terms of Section 97 of the Housing Act 1985 or from any leaseholder in the **Property** seeking consent to improve under the terms of their lease.

11.2 If an **Improvement Notice** is served on the Council the Council shall deliver the notice to the **TMO** within 7 days of receipt.

11.3 Within 14 days of receiving an **Improvement Notice** the **TMO** shall pass the notice on to the Council and inform the Council in writing whether the **TMO** considers that the Council should:

- a) consent to the improvement proposed; or

- b) refuse consent to the improvement proposed; or
 - c) grant consent, subject to stated conditions.
- 11.4 If the **TMO** considers that consent to the improvement proposed in an **Improvement Notice** should be refused or granted subject to conditions, the **TMO** shall also within the 14 days provided for in clause 11.3 inform the Council in writing of the reasons for the **TMO's** opinion.
- 11.5 The Council shall give reasonable consideration to the **TMO's** opinion in deciding whether or not to grant consent to the improvement proposed in an **Improvement Notice**. The Council shall as soon as is reasonably practicable give the person who served the **Improvement Notice** and the **TMO** a written statement of its decision and, if it refuses consent or gives consent subject to conditions, the reasons for the refusal or conditions.

11 Right to Improve and Leaseholder Improvements

- 11 *(Option C: responsibility for considering requests for improvements delegated to the TMO).*
- 11.1 The **TMO** is authorised to receive a notice (an "**Improvement Notice**") served by any tenant in the **Property** claiming the Right to Improve their dwelling under Section 97 of the Housing Act 1985 or from any leaseholder in the **Property** seeking consent to improve under the terms of their lease. The **TMO** is also authorised in accordance with the **Improvements Policy** agreed with the Council (the "**Improvements Policy**") (a copy of which forms Appendix 7 to this chapter) to decide whether or not consent shall be given to the improvement proposed in an **Improvement Notice**.
- 11.2 If an **Improvement Notice** is served on the Council the Council shall deliver the notice to the **TMO** within 7 days of receipt.
- 11.3 Within 28 days of receiving an **Improvement Notice** the **TMO** shall in accordance with the **Improvements Policy** consider the improvement proposed and in writing notify the person who served the **Improvement Notice** that the **TMO** either:
- a) consents to the improvement proposed; or
 - b) refuses consent to the improvement proposed, giving the reasons for the refusal; or
 - c) grants consent to the improvement proposed subject to stated conditions, giving the reasons for the conditions imposed.
- 11.4 The **TMO** shall, not less than once every year, send a written report to the Council which provides the following information:

- a) the number of **Improvement Notices** received;
- b) the names and addresses of persons who served an **Improvement Notice**; and
- c) in respect of each **Improvement Notice** whether consent was given or refused; and
 - i) if consent was given subject to conditions, the conditions imposed and the reasons for them; and
 - ii) if consent was refused the reasons for refusal.

12 Right to Repair

- 12 *(Option A: the Council retains responsibility for administering the right of secure tenants to have repairs carried out. The tenancy agreement or tenant handbook states that **Right to Repair Claims** should be served only on the Council. TMO indemnifies the Council against compensation payments under the Right to Repair if the repair is one for which the TMO has delegated responsibility under clause 1).*
- 12.1 The Council shall retain the responsibility for administering any claim (a "**Right to Repair Claim**") from secure tenants to have qualifying repairs carried out under The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994 (the "**Right to Repair Regulations**").
- 12.2 If the Council receives a **Right to Repair Claim** which relates to a repair responsibility delegated to the TMO under clause 1 above the Council shall immediately on the same working day as the **Right to Repair Claim** is received (or if that day is not a working day, on the first working day after receipt) notify the TMO that the **Right to Repair Claim** has been received and give sufficient details of the claim in order that the TMO may have the opportunity to consider if the repair is a qualifying repair under the **Right to Repair Regulations** (a "**Qualifying Repair**").
- 12.3 If the repair is a **Qualifying Repair** the TMO shall issue a repair notice containing the information required by the **Right to Repair Regulations** to a contractor (which may be the TMO) to carry out the repair within the first prescribed period in the **Right to Repair Regulations**. The TMO shall give a copy of the repair notice to the Council in order that the Council may give a copy to the tenant who submitted the **Right to Repair claim** together with an explanation of the provisions of the **Right to Repair Regulations**.
- 12.4 If the repair is not a **Qualifying Repair**, the TMO shall, in sufficient time to enable the Council to fulfil its obligations under the **Right to Repair Regulations**, inform the Council that the repair is not a **Qualifying Repair** in order that the Council may notify the tenant who submitted the **Right to Repair Claim** that the repair is not a **Qualifying**

Repair, explain why, and give the tenant an explanation of the provisions of the **Right to Repair Regulations**.

12.5 If the tenant notifies the Council that:

- a) a **Qualifying Repair** for which the **TMO** is responsible has not been carried out within the first prescribed period in the **Right to Repair Regulations**; and that
- b) the tenant requires another contractor to carry out the **Qualifying Repair**;

the Council shall immediately notify the **TMO** and the **TMO** shall, where it is reasonably practicable, issue a further repair notice (satisfying the requirements of the **Right to Repair Regulations**) to another contractor and give a copy to the Council and the tenant.

12.6 Subject to the Council notifying the **TMO** as required in this clause, the **TMO** shall indemnify the Council against any compensation which may be payable to a tenant under the **Right to Repair Regulations** because of a failure by the **TMO** to carry out a repair within the second prescribed period set out in the **Right to Repair Regulations**.

12 Right to Repair

12 (Option B: administration of **Right to Repair Claims** split between the **TMO** and the Council. The Council administers **Right to Repair Claims** in so far as they relate to the Council's retained repairing responsibilities. The **TMO** has delegated authority to administer **Right to Repair Claims** and compensation payments which relate to the **TMO's** delegated repair responsibilities. The tenancy agreement or tenants' handbook states where **Right to Repair Claims** should be served but both the Council and the **TMO** have responsibility to pass on claims if they relate to the other's repair responsibilities).

12.1 The **TMO** shall have authority to receive and administer any claim from secure tenants (a "**Right to Repair Claim**") to have a qualifying repair (a "**Qualifying Repair**") under The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994 (the "**Right to Repair Regulations**") carried out in respect of repairs which are the responsibility of the **TMO** under clause 1 above.

12.2 If the Council receives a **Right to Repair Claim** which relates to a repair responsibility delegated to the **TMO** under clause 1 above the Council shall immediately on the same working day as the **Right to Repair Claim** is received (or if that day is not a working day, on the first working day after receipt) pass the **Right to Repair Claim** on to the **TMO**.

12.3 If the **TMO** receives a **Right to Repair Claim** which relates to a repair responsibility retained by the Council under clause 2 above the **TMO** shall immediately on the same working day as the **Right to Repair Claim** is received (or if that day is not a working

day, on the first working day after receipt) pass the **Right to Repair Claim** on to the Council in order that the Council may administer the claim.

- 12.4 If the **Right to Repair Claim** is for a repair for which the **TMO** is responsible and is a **Qualifying Repair** the **TMO** shall issue a repair notice containing the information required by the **Right to Repair Regulations** to a contractor (which may be the **TMO**) to carry out the repair within the first prescribed period in the **Right to Repair Regulations**. The **TMO** shall give a copy of the repair notice to the tenant who submitted the **Right to Repair Claim** together with an explanation of the provisions of the **Right to Repair Regulations**.
- 12.5 If the **Right to Repair Claim** is for a repair for which the **TMO** is responsible but is not a **Qualifying Repair**, the **TMO** shall within the period required by the **Right to Repair Regulations** notify the tenant that the repair is not a **Qualifying Repair**, explain why and give the tenant an explanation of the provisions of the **Right to Repair Regulations**.
- 12.6 If the tenant notifies the **TMO** that:
- a) a **Qualifying Repair** for which the **TMO** is responsible has not been carried out within the first prescribed period in the **Right to Repair Regulations**; and that
 - b) the tenant requires another contractor to carry out the **Qualifying Repair**;
- the **TMO** shall, where it is reasonably practicable, issue a further repair notice to another contractor and give a copy to the tenant. If the tenant notifies the Council of the matters under headings a) and b) above, the Council shall immediately pass on that notification to the **TMO**.
- 12.7 The **TMO** shall be responsible for administering and meeting any claims for compensation which may be payable to a tenant under the **Right to Repair Regulations** because of a failure by the **TMO** to carry out a repair for which it has delegated responsibility under clause 1 within the second prescribed period set out in the **Right to Repair Regulations**.

12 Right to Repair

12 (Option C: the **TMO** has delegated authority to administer the right of secure tenants to have repairs carried out. The tenancy agreement or tenant handbook states that **Right to Repair Claims** should be served on the **TMO**. The Council indemnifies the **TMO** against compensation payments under the **Right to Repair Regulations** if the repair is one for which the Council has retained responsibility under clause 2).

- 12.1 The **TMO** shall have authority to receive and administer any claim from secure tenants to have qualifying repairs carried out (a "**Right to Repair Claim**") under The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994 (the "**Right to Repair Regulations**").

- 12.2 If the **TMO** receives a **Right to Repair Claim** which relates to a repair responsibility retained by the Council under clause 2 above the **TMO** shall immediately on the same working day as the **Right to Repair Claim** is received (or if that day is not a working day, on the first working day after receipt) notify the Council that the **Right to Repair Claim** has been received in order that the Council may have the opportunity to consider if the repair is a qualifying repair under the **Right to Repair Regulations** (a "**Qualifying Repair**").
- 12.3 If the repair notified to the Council under clause 12.2 is a **Qualifying Repair** the Council shall issue a repair notice, containing the information required by the **Right to Repair Regulations**, to a contractor (which may be the Council) to carry out the repair within the first prescribed period in the **Right to Repair Regulations**. The Council shall give a copy of the repair notice to the **TMO**.
- 12.4 If the repair is a **Qualifying Repair** for which the **TMO** is responsible under clause 1 above, the **TMO** shall issue a repair notice containing the information required by the **Right to Repair Regulations** to a contractor (which may be the **TMO**) to carry out the repair within the first prescribed period in the **Right to Repair Regulations**.
- 12.5 If in respect of a **Qualifying Repair** the **TMO** either:
- a) issues a repair notice to a contractor; or
 - b) receives a copy of a repair notice issued by the Council;
- the **TMO** shall give a copy of the repair notice to the tenant who submitted the **Right to Repair Claim** together with an explanation of the provisions of the **Right to Repair Regulations**.
- 12.6 If the **Right to Repair Claim** for a repair for which the Council is responsible but is not a **Qualifying Repair**, the Council shall, within the period necessary to enable the **TMO** to comply with the requirements of the **Right to Repair Regulations**, inform the **TMO** that the repair is not a **Qualifying Repair**.
- 12.7 If the **TMO** either:
- a) concludes that the repair claimed by the tenant for which it is responsible under clause 1 is not a **Qualifying Repair**; or
 - b) receives notice under clause 12.6 from the Council that the repair claimed is not a **Qualifying Repair**;
- the **TMO** shall notify the tenant who submitted the **Right to Repair Claim** that the repair is not a **Qualifying Repair** and give the tenant an explanation of the provisions of the **Right to Repair Regulations**.

12.8 If the tenant notifies the **TMO** that:

- a) a **Qualifying Repair** has not been carried out within the first prescribed period in the **Right to Repair Regulations**; and
- b) that the tenant requires another contractor to carry out the **Qualifying Repair**;

the **TMO** shall:

- i) if the **Right to Repair Claim** relates to a repair for which the Council is responsible immediately notify the Council and the Council shall, where it is reasonably practicable, issue a further repair notice to another contractor and give a copy to the tenant; or
- ii) if the **Right to Repair Claim** relates to a repair for which the **TMO** is responsible the **TMO** shall, where it is reasonably practicable, issue a further repair notice to another contractor and give a copy to the tenant. If the tenant notifies the Council of the matters under headings a) and b) above, the Council shall immediately pass on that notification to the **TMO**.

12.9 The **TMO** shall be responsible for administering and meeting any claims for compensation which may be payable to a tenant under the **Right to Repair Regulations** because of a failure by the **TMO** or the Council to carry out the repair within the second prescribed period set out in the **Right to Repair Regulations**. Subject to the **TMO** notifying the Council as required in this clause, the Council shall indemnify the **TMO** against any compensation which may be payable to the tenant under the **Right to Repair Regulations** because of a failure by the Council to carry out a repair within the second prescribed period set out in the **Right to Repair Regulations**.

CHAPTER 2

APPENDIX 1

The TMO's Repair Responsibilities and Performance Standards

CHECKLIST

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.



List the repair responsibilities for dwellings let on periodic secure tenancies or fixed term secure tenancies which are delegated to the TMO

For example:

- *the plumbing and heating systems including:*
 - *cold water systems beyond the main stopcock in each dwelling including pipes, valves, stopcocks, cisterns, overflows, cold water storage tanks and insulation of these systems*
 - *hot water systems and heating including boilers, radiators, pipework, hot water storage tanks, pumps, feed and expansion tanks, insulation and annual servicing of these systems*
 - *the Council's plumbed fittings including baths, sinks basins, WC suites, taps and waste pipes*
- *the gas supply pipework from the meter to any appliance and any gas fittings or appliances supplied by the Council*
- *the electrical services from the electricity board's meter including internal wiring, conduits, socket outlets, switches, light fittings and ventilation systems*
- *the Council's internal fittings and fixtures including:*
 - *window sills and window ironmongery*
 - *doors and door ironmongery*
 - *cupboards and kitchen units*
 - *architraves and skirtings*
 - *staircases and balustrades*
 - *internal non loadbearing partitions and internal surfaces of internal loadbearing and external walls including their plastered finishes*
 - *floor finishes supplied by the Council*
- *reglazing of broken windows to dwellings which breakages are not due to damage or neglect by the tenant*
- *redecorating of the interior of vacant dwellings where such redecoration is necessary to restore any dwelling to a suitable condition for reletting*



List the repair responsibilities for dwellings let on periodic secure tenancies or fixed term secure tenancies and flats sold on long leases which are delegated to the TMO

For example:

- external windows, window frames, doors, door frames, ironmongery, window fittings, soffits and bargeboards
- the rainwater system including gutters, downpipes and fixings
- the vertical soil stacks and vent pipes above ground level
- the common parts of buildings in the **Property** including:
 - staircases and landings
 - doors, windows and their ironmongery and glazing
 - refuse chutes and chambers
 - electrical services for the supply to the common parts, including wiring, conduits, socket outlets, switches and light fittings
 - floor finishes
 - internal non loadbearing partitions and internal surfaces of external walls including their plastered finishes
 - the heating system
 - garages, storehouses and community facilities
 - entryphone, security and fire-fighting or protection systems



List the repair responsibilities for dwellings let on periodic secure tenancies or fixed term secure tenancies and flats or houses sold on long leases and freehold houses (except where the responsibility for repair and maintenance is that of a leaseholder or freeholder under his or her lease or deed of freehold transfer) which are delegated to the TMO

For example:

- fences, enclosure walls and gates
- roads, footpaths, courtyards and parking areas not adopted for maintenance by the Council under its statutory powers as Highway Authority
- the children's play area(s)
- the light fittings for the grounds and non adopted footpaths and car parking including the supply cables from the electricity supply meter



List the repair responsibilities for dwellings let on furnished tenancies, the following repairs in addition to the repairs listed above which are delegated to the TMO

For example:

- the internal decoration of the property
- the supply and replacement of carpets and floor coverings
- the supply and replacement of kitchen white goods such as cookers, fridges, freezers and washing machines

- *the supply and replacement of furniture and furnishings such as curtains, beds, tables, easy chairs*



The priorities and timescales for completing each category of repair delegated to the TMO in this Appendix

For Example:

- *Emergency:)*
- *Urgent:) qualifying repairs, timescales and standards*
- *Routine:)*
- *Rechargeable repairs*



Variations to the standard repair performance in particular circumstances

For example:

- *special needs groups such as the elderly, lone women, other vulnerable groups*
- *repairs arising from harassment*
- *offensive graffiti*
- *repairs arising from domestic violence*



Arrangements for reporting repairs

For example:

- *procedures for tenant identification of repairs*
- *procedures for regular inspection of communal areas and identification of repair needs*
- *where repairs should be reported/office opening hours*
- *procedures for reporting out of hours emergencies*
- *procedures and any targets for pre-inspection of repairs*
- *procedure for authorising repairs and placing orders*
- *access arrangements and/or appointment systems*
- *arrangements for dealing with repairs which fall within programmed works*
- *how information is provided to residents about these procedures*



Arrangements for planned and cyclical maintenance and replacement

For example:

- *collecting relevant information such as stock condition surveys*
- *arrangements for identifying planned replacement and maintenance programmes*
- *consultation arrangements and information to be provided to tenants*
- *arrangements for the testing of appliances and installations including void dwellings*



Conduct of repair staff

For example:

- *identification to be carried and shown to tenants*
- *observing all health and safety procedures*
- *care taken of tenant possessions and decorations*
- *making good and tidying up*



Details of Compensation arrangements

For example:

- *criteria for qualification*
- *timetable for dealing with claims*
- *basis for calculating compensation claims*
- *arbitration/appeal procedures*
- *information of entitlement to compensation provided to residents*



Arrangements for monitoring work

For example:

- *work in progress*
- *performance of contractors*
- *post inspection procedures and any targets*
- *arrangements for determining and monitoring the level of tenant satisfaction*
- *information to be collected and monitored including the number of jobs in each category completed within the response time compared with targets*
- *expenditure in relation to budget*
- *the quality of repair jobs*
- *information to be provided to the Management Committee and all residents (including the form and frequency)*

APPENDIX 2

The Council's Repair Responsibilities and Performance Standards

CHECKLIST

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.



Definitions of responsive/reactive categories of repair that are the responsibility of the Council

For example:

- *the external structures of buildings, including brickwork, pointing, lintels, the external walls and their openings and all loadbearing, party and structural walls*
- *the roof structure and roof covering*
- *the surface water and foul sewers including gulleys, access chambers and their covers*
- *the water mains from the supply pipe or stopcock to the mains stopcock in each dwelling*
- *the gas mains from the main supply pipe to the meter in each dwelling*
- *lifts including, motors, hoists, cables, doors, shafts and any associated plant or machinery*
- *floors, including joists and floorboards*



The priorities and timescales for completing each category of repair retained by the Council in this appendix

For Example:

- *Emergency:)*
- *Urgent:) qualifying repairs, timescales and standards*
- *Routine:)*
- *Rechargeable repairs*



Variations to the standard repair performance in particular circumstances

For example:

- *special needs groups such as the elderly, lone women, other vulnerable groups*
- *repairs arising from harassment*
- *offensive graffiti*
- *repairs arising from domestic violence*



Arrangements for reporting repairs

For example:

- *procedures for tenant identification of repairs*
- *procedures for regular inspection of communal areas and identification of repair needs*
- *where repairs should be reported/office opening hours*
- *procedures for reporting out of hours emergencies*
- *procedures and any targets for pre-inspection of repairs*
- *procedure for authorising repairs and placing orders*
- *access arrangements and/or appointment systems*
- *arrangements for dealing with repairs which fall within programmed works*
- *how information is provided to residents about these procedures*



Arrangements for planned and cyclical maintenance and replacement

For example:

- *collecting relevant information such as stock condition surveys*
- *arrangements for identifying planned replacement and maintenance programmes*
- *consultation arrangements and information to be provided to tenants*
- *arrangements for the testing of appliances and installations including void dwellings*



Conduct of repair staff

For example:

- *identification to be carried and shown to tenants*
- *observing all health and safety procedures*
- *care taken of tenant possessions and decorations*
- *making good and tidying up*



Details of Compensation arrangements

For example:

- *criteria for qualification*
- *timetable for submitting and dealing with claims*
- *basis for calculating compensation claims*
- *arbitration/appeal procedures*
- *information of entitlement to compensation provided to residents*



Arrangements for monitoring work

For example:

- *work in progress*
- *performance of contractors*
- *post inspection procedures and any targets*
- *arrangements for determining and monitoring the level of tenant satisfaction*

- *information to be collected and monitored including the number of jobs in each category completed within the response time compared with targets*
- *expenditure in relation to budget*
- *the quality of repair jobs*
- *information to be provided to the Management Committee and all residents (including the form and frequency)*

APPENDIX 3

Performance Standards for Letting and/or Supervising Major Works Contracts

CHECKLIST

(if clause 6 options B or C are chosen)

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.

 **State how the consultants required will be determined and appointed**
(if clause 6 option C chosen)

For example:

- *Consultants could include architects, quantity surveyors, structural engineers and any specific services consultants*
- *tendering or selection arrangements*
- *council involvement in determining and selecting*

 **State arrangements for presenting proposed schemes to the Council for approval and liaising with the Council about any required amendments to the proposals**

 **State key elements to be included in any specification or contract**

For example:

- *access arrangements*
- *resident consultation*
- *arrangements to cover damage to tenants' possessions*
- *arrangements for dealing with unsatisfactory performance by contractors*
- *arrangements for working in vacant properties*
- *arrangements for working in tenanted properties*
- *duty of the contractor to provide operating instructions/technical data on installations as required*
- *requirements to attend meetings of the TMO*

 **State arrangements for tendering** (if clause 6 option C chosen)

For example:

- *how the tender list will be drawn up*
- *procedure used for seeking and checking references and the financial status of potential contractors*
- *how the tender list is agreed*
- *arrangements for tender opening including venue, attendance & confidentiality*

- *set out criteria on which acceptance of a tender will be based*



State arrangements for submitting for Council approval all received tenders and which tender the TMO wishes to accept, plus the date the contract will commence and procedures for liaison with the Council in the event that this is not approved (if clause 6 option C chosen)



Set out procedures for contract administration and management

For example:

- *on site supervision arrangements so that work is carried out in accordance with the contract*
- *information to residents about arrangements for the works and where to report problems and complaints*
- *arrangements for residents to attend contract meetings*
- *procedures for dealing with complaints against the contractor*
- *set out who will authorise any action to be taken against the contractor if required*
- *procedures for authorising payments under any contract*
- *procedures for monitoring contract costs and ensuring appropriate action is taken if the contract is over budget*



Set out the process by which works will be checked prior to handover, and what authorization will be required before a handover is accepted



Set out procedures for handling defects

For example:

- *ensuring all affected residents have clear information and instructions about repairs during the defects period*
- *all affected residents are consulted about outstanding defects*
- *outstanding defects which are the responsibility of the contractor are either remedied by the contractor or remedial work carried out in default and reflected in the final account*



Set out the future management and maintenance requirements as a result of capital works and how these will be handled

For example:

- *variations to the management agreement to reflect additional repairing obligations and consequential amendments to the **ALLOWANCES***
- *service contracts to be put in place once the contractor/ manufacturer liability is over*



Set out a process by which the final account should be agreed, and procedures to cover any disputes between the TMO and the contractor

APPENDIX 4

The Schedule of **Major Works** (if any) delegated under clause 6 option C

APPENDIX 5

TMO's services

CHECKLIST

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.



List the services the TMO shall be responsible for providing for flats let on periodic tenancies or fixed term secure tenancies

For example:

- cleaning common parts of the **Property** including:
 - staircases and landings (including walls and ceilings)
 - windows, doors, floors, lifts, lights and light fittings
- the electricity supply for lighting the common parts and the replacement of light bulbs
- the electricity or gas supply for the heating common parts
- the general upkeep of the common grounds and gardens of the **Property** including:
 - clearing litter from the estate
 - cutting communal grassed areas and maintaining flower beds, trees and shrubs
 - clearing play areas and play equipment
 - sweeping, snow clearing and salting of non adopted roads, footpaths and car parking areas
- lighting of the grounds, non adopted roads and footpaths and car parking areas (including the replacement of light bulbs)
- cleaning and removal of graffiti



List the services the TMO shall be responsible for providing for flats sold on long leases

For example:

- cleaning common parts of the **Property** including:
 - staircases and landings (including walls and ceilings)
 - windows, doors, floors, lifts, lights and light fittings
- the electricity supply for lighting the common parts and the replacement of light bulbs
- the electricity or gas supply for heating common parts
- the general upkeep of the common grounds and gardens of the **Property** including:
 - clearing litter from the estate
 - cutting communal grassed areas and maintaining flower beds, trees and shrubs
 - clearing play areas and play equipment

- sweeping, snow clearing and salting of non adopted roads, footpaths and car parking areas
- lighting of the grounds, non adopted roads and footpaths and car parking areas (including the replacement of light bulbs)
- cleaning and removal of graffiti



List the services the TMO shall be responsible for providing for houses let on periodic tenancies or fixed term secure tenancies

For example:

- *the general upkeep of the common grounds and gardens of the **Property** including:*
 - *clearing litter from the estate*
 - *cutting communal grassed areas and maintaining flower beds, trees and shrubs*
 - *clearing play areas and play equipment*
 - *sweeping, snow clearing and salting of non adopted roads, footpaths and car parking areas*
- *lighting of the grounds, non adopted roads and footpaths and car parking areas (including the replacement of light bulbs)*
- *cleaning and removal of graffiti*



List the services the TMO shall be responsible for providing for freehold houses or houses sold on long leases

For example:

- *the general upkeep of the common grounds and gardens of the **Property** including:*
 - *clearing litter from the estate*
 - *cutting communal grassed areas and the maintenance of flower beds, trees and shrubs*
 - *sweeping play areas, non adopted roads and footpaths and car parking areas (including salting and snow clearing)*
- *lighting of the grounds, non adopted roads and footpaths and car parking areas (including the replacement of light bulbs)*
- *cleaning and removal of graffiti on common parts of the **Property***



Set out the performance standards for each service

APPENDIX 6

Council's Services

CHECKLIST

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.

-  **List the services the Council shall retain responsibility for providing for flats let on periodic tenancies or fixed term secure tenancies**

For example:

- *services not delegated to the TMO under Clause 9 and Appendix 5*

-  **List the services the Council shall retain responsibility for providing for flats sold on long leases**

For example:

- *services not delegated to the TMO under Clause 9 and Appendix 5*

-  **List the services the Council shall retain responsibility for providing for houses let on periodic tenancies or fixed term secure tenancies**

For example:

- *services not delegated to the TMO under Clause 9 and Appendix 5*

-  **List the services the Council shall retain responsibility for providing for freehold houses or houses sold on long leases**

For example:

- *services not delegated to the TMO under Clause 9 and Appendix 5*

-  **Set out the performance standards for each service**

APPENDIX 7

Improvements Policy

CHECKLIST

(For use if Clause 11, option C is chosen)

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.



Set out under what circumstances a request to carry out an improvement may be refused

For example:

- *it would reduce the number of rooms in the dwelling*
- *it would make the dwelling structurally unsound*
- *it would make the dwelling unsafe for the occupants*
- *it would reduce the market value of the property*
- *it would cause the TMO to incur additional expenditure*



Set out any conditions which might be attached to giving consent to carry out an improvement.

For example:

- *the TMO will not pay for any maintenance costs arising from the improvement*
- *the property must be put back to its original state if the tenant leaves, if this is reasonable*

CHAPTER 3

RENT AND SERVICE CHARGES

1 Rent and Service Charge Collection

1 *(Option A: Council collects rent and service charges).*

1.1 The Council shall retain responsibility for collecting rents due from tenants in the **Property** ("**Rents**" which expression shall include any charges made for the provision of services, see clauses 9 and 10 of chapter 2) and ground rents and service charges from leaseholders and freeholders (if any) in the **Property** ("**Service Charges**").

1.2 *(Optional clause for TMOs with responsibility for Rent and Service Charges arrears control under options C to E in clause 2).*

1.2 To enable the **TMO** to exercise its responsibility set out in clause 2 below to control **Rent** and/or **Service Charges** arrears the Council shall, for each **Rent** period, provide or cause to be provided to the **TMO** a reconciled statement of **Rent** and/or **Service Charges** received during that **Rent** period and a statement of the current arrears or advances on each **Rent** or **Service Charges** account for each tenant, leaseholder or freeholder in the **Property**. Such statements shall be provided by the Council within the time limits and in accordance with the procedure specified in the Arrears Prevention and Control Procedure (the "**Arrears Prevention and Control Procedure**") set out in Appendix 1 to this chapter.

1 Rent and Service Charge Collection

1 *(Option B: the TMO collects Rent and Service Charges). [Link to options C to D in clause 2, TMO also takes responsibility for arrears control].*

1.1 *(Option 1: the TMO collects Rent due from weekly and/or monthly tenants only).*

1.1 The **TMO** shall be authorised to collect rents due from tenants ("**Rents**" which expression shall include any charges made for the provision of services, see clauses 9 and 10 of chapter 2) for all dwellings in the **Property**.

1.1 *(Option 2: the TMO has full Rent and Service Charges collection responsibilities).*

1.1 The **TMO** shall be authorised to collect rents due from tenants ("**Rents**" which expression shall include any charges made for the provision of services, see clauses 9 and 10 of chapter 2) and ground rents and service charges due from leaseholders and freeholders (if any) ("**Service Charges**") for all dwellings in the **Property**.

1.2 The **TMO** shall keep proper records of **Rents** and **Service Charges** collected on behalf of the Council. All **Rent** or **Service Charges** received shall be paid into the bank account kept by the **TMO** for receiving **Rents** and **Service Charges** as provided for in clause 4 of chapter 4 and shall be credited to **Rent** and/or **Service Charges** account records within the timescale provided for in the Arrears Prevention and Control Procedure which forms Appendix 1 to this chapter (the "**Arrears Prevention and Control Procedure**").

1.3 The **TMO** shall for each **Rent** and **Service Charges** period and not less frequently than once each month:

- a) calculate the arrears or advance balance on each **Rent** and **Service Charges** account; and
- b) confirm that all **Rents** and **Service Charges** received have been properly accounted for by reconciling the **Rents** and **Service Charges** received and banked with the net **Rents** and **Service Charges** due (the net **Rents** and **Service Charges** due being calculated by deducting the total arrears from and adding total advances to the total **Rents** and **Service Charges** due for that rent period).

1.4 *(Option 1: confidentiality clause, identity revealed).*

1.4 The **TMO** shall treat all information about any **Rent** or **Service Charges** account as strictly confidential. The information shall be restricted to the officers, employees or committee responsible for managing **Rent** or **Service Charges** accounts and controlling arrears.

1.4 *(Option 2: confidentiality clause, identity not revealed.)*

1.4 The **TMO** shall treat all information about **Rent** or **Service Charges** accounts as strictly confidential. Records of **Rent** or **Service Charges** accounts and information which might reveal the identity of any tenant or leaseholder shall be restricted to the employees or officers of the **TMO** responsible for recording and reconciling **Rent** and **Service Charges** accounts. Information given to the committee or general meeting of the **TMO** which has responsibility for managing arrears in accordance with the **Arrears Prevention and Control Procedure** shall be provided in a way which does not reveal the identity of the person(s) whose arrears are being considered. All information concerning **Rent** or **Service Charges** accounts shall be used only for the purpose of managing **Rent** or **Service Charges** accounts and controlling arrears.

2 **Rent and Service Charge Arrears Control**

2 *(Option A: TMO has no involvement in **Rent** and/or **Service Charge** collection or arrears management). [Link to option A in clause 1].*

2 The Council shall retain responsibility for the management of arrears of **Rent** and **Service Charges**.

2 **Rent and Service Charge Arrears Control**

2 *(Option B: Council collects **Rents** and **Service Charges** and consults with the **TMO** on action proposed in serious arrears cases) [Link to clause 1, option A].*

2.1 Subject to the consultation provisions of clause 2.2 below, the Council shall retain responsibility for the management of arrears of **Rent** and **Service Charges**.

2.2 The Council shall consult the **TMO** before taking any of the following actions to recover arrears of **Rent** and **Service Charges** from any tenant or leaseholder in the **Property**:

- a) serving a Notice Seeking Possession;
- b) serving a Notice to Quit;
- c) commencing court proceedings for debt or for forfeiture or possession; or
- d) taking any steps to distrain on goods or to enforce an order for possession or forfeiture.

2.3 In consulting the **TMO** the Council shall provide the **TMO** with such information about the arrears case as the **TMO** 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 arrears management practice agreed by the Council and the **TMO** for the **Property** (the "**Arrears Prevention and Control Procedure**") set out in Appendix 1 to this chapter.

2.4 The Council shall give due regard to any representations the **TMO** may make in respect of the action proposed by the Council in any arrears case.

2.5 *(Option 1: confidentiality clause, identity revealed).*

2.5 The **TMO** shall treat all information about **Rent** or **Service Charges** arrears (including the identity of persons in arrears) as strictly confidential. The information shall only be used for the purpose of responding to consultation under this clause.

2.5 *(Option 2: confidentiality clause, identity not revealed).*

2.5 The information given to the **TMO** for the purposes of consultation under the terms of this clause shall not reveal the identity of the person(s) whose arrears are the subject of the action proposed. The **TMO** shall treat all information about **Rent** or **Service Charges** arrears as strictly confidential. The information shall only be used for the purpose of responding to consultation under this clause.

2 Rent and Service Charge Arrears Control

2 *(Option C: **TMO** collects **Rents** and **Service Charges** and manages arrears, but provision to hand-back serious arrears cases to the Council. This option can only be included if both the **TMO** and the Council agree and the **Approved Person** (as referred to in the **Regulations**) cannot recommend that it be included in the proposed agreement without the agreement of the **TMO** and the Council). [Link to clause 1, option B].*

2.1 The **TMO** shall take prompt action to recover any arrears of **Rent** or **Service Charges** and shall seek to prevent arrears becoming serious by managing cases of arrears as provided for in the **Arrears Prevention and Control Procedure** set out in Appendix 1 to this chapter.

2.2 If the **TMO** has, in respect of any particular case of arrears,

- a) exhausted the powers delegated to it in the **Arrears Prevention and Control Procedure** and considers that to control the arrears action needs to be taken which the **TMO** does not have power to take within the **Arrears Prevention and Control Procedure**, the **TMO** shall hand back to the Council the collection of **Rent** or **Service Charges** and the control of arrears in respect of that case; or
- b) not exhausted the powers specified in the **Arrears Prevention and Control Procedure** the **TMO** may either:
 - i) continue to control the arrears in accordance with the **Arrears Prevention and Control Procedure**, or
 - ii) hand back to the Council the collection of **Rent** or **Service Charges** and control of arrears in respect of that case if the **TMO** considers that to control arrears action needs to be taken which would be more effectively taken by the Council.

2.3 If the **TMO** is to hand back an arrears case to the Council under clause 2.2 above the **TMO** shall give to the Council not less than 7 days written notice in advance of the **Rent** or **Service Charges** due date from which the Council is to take over the responsibility for the arrears. The notice shall state the name and address of the arrears case being handed back and the amount of the arrears. The **TMO** shall also

provide the Council with any information the Council reasonably needs to control the arrears.

2.4 If an arrears case is handed back to the Council the **TMO** shall not be responsible for any additional arrears which accrue after the **Rent** or **Service Charges** due date from which the Council takes over the management of the arrears. The Council may in accordance with its normal practice for the control of arrears take whatever action the Council considers necessary to control or recover the arrears. Any money recovered by the Council shall be used as follows:

- i) first, to meet any costs awarded to the Council by a Court in legal action taken to recover the arrears;
- ii) secondly, to meet the repayment of arrears which accrued after the **Rent** or **Service Charges** due date on which the Council took over responsibility for the arrears case;
- iii) thirdly, the balance of money recovered shall be deducted from the next rent payment due from the **TMO** to the Council under clause 11.

2.5 If the Council succeeds in controlling the arrears where the case was handed back to the Council and all arrears of **Rent** or **Service Charges** are repaid the Council shall return the collection of and the control of the **Rent** or **Service Charges** account in respect of that case to the **TMO**. The Council shall give the **TMO** not less than 7 days written notice in advance of the **Rent** or **Service Charges** due date from which the **TMO** will resume responsibility for the **Rent** or **Service Charges** account specified in the Notice.

2 Rent and Service Charge Arrears Control

2 *(Option D: TMO collects Rents and Service Charges and is responsible for arrears management in line with TMO policy including initiating actions for possession. Council serves notices at request of TMO. Council has discretion not to serve notices, but rent waiver clause operates if Council exercises discretion).*

2.1 The **TMO** shall take prompt action to recover any arrears of **Rent** or **Service Charges** and shall seek to prevent arrears becoming serious by managing cases of arrears as provided for in the **Arrears Prevention and Control Procedure** set out in Appendix 1 to this chapter.

2.2 If the **TMO** has, in respect of any particular case of arrears exhausted the powers delegated to it in the **Arrears Prevention and Control Procedure** and considers that to control the arrears action needs to be taken which the **TMO** does not have power to take within the **Arrears Prevention and Control Procedures**, the **TMO** shall serve written notice on the Council, as provided for in the **Arrears Prevention and Control Procedure**, 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; or
- iii) take steps to enforce a court order.

2.3 The **TMO** shall give the Council any information the Council may reasonably require to show that the **TMO** has followed the procedure set out in the **Arrears Prevention and Control Procedure** and to enable the Council to take the action requested by the **TMO**. The Council shall take the action requested by the **TMO** within 7 days of receiving the **TMO**'s notice unless the Council uses its discretion to suspend action as provided for in clause 2.5 below.

2.4 The Council shall not begin court proceedings for arrears of **Rent** or **Service Charges** while this Agreement is in force unless requested to do so by the **TMO** under the terms of this clause. If the Council begins court proceedings as requested by the **TMO** the Council shall, subject to clause 2.5 below, take all reasonable steps to pursue the proceedings.

2.5 The Council may at its sole discretion in any case of arrears decide not to serve notice or begin or continue with proceedings to gain possession of a dwelling. If the Council uses this discretion the Council shall inform the **TMO** in writing of the Council's decision and the reasons for it. If the Council uses this discretion any **Rent** or **Service Charges** not collected in that case shall not be payable by the **TMO** to the Council and shall be waived as provided for in clause 13 of this chapter.

2 Rent and Service Charge Collection and Arrears Control

2 *(Option E: TMO totally responsible for Rent and Service Charges collection and arrears control in line with agreed policy right up to the eviction of the tenant or action to enforce payment of Service Charges. Obligation simply to notify Council at specified stages).*

2.1 The **TMO** shall take prompt action to recover any arrears of **Rent** and **Service Charges** and shall seek to prevent arrears becoming serious by managing cases of arrears as provided for in the **Arrears Prevention and Control Procedure** set out in Appendix 1 to this chapter. The Council authorises the **TMO** to take proceedings under this clause as agent for the Council.

2.2 If the **TMO** is unable to recover arrears by following the procedure set out in the **Arrears Prevention and Control Procedure** the **TMO** is authorised to begin proceedings against a tenant, leaseholder or freeholder. In taking such action the **TMO** shall follow the procedure in the **Arrears Prevention and Control**

Procedure. The **TMO** shall notify the Council in writing within 7 days if the **TMO**:

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

2.3 The **TMO** shall not enforce a court order without the prior written consent of the Council, which consent shall not be unreasonably withheld or delayed. The Council shall reply to requests from the **TMO** for consent to enforce a court order within 7 days of the request being received. If the Council refuses consent or gives consent subject to conditions the Council shall, also within 7 days, give the **TMO** written reasons for the refusal or for the conditions imposed.

2.4 If the **TMO**, with the consent of the Council under clause 2.3 above, enforces an order for possession of any dwelling in the **Property** the **TMO** shall give to the Council not less than 48 hours written notice of the date and time at which the eviction is to take place.

3 Arrangements for collecting Arrears due at the STARTING DATE

3 *(Modular clause with 2 options).*

3 *(Option A: no clause needed because the Council retains responsibility for **Rent** and **Service Charges** collection and arrears control).*

3.1 Clause not included.

3 Arrangements for collecting Arrears due at the STARTING DATE

3 *(Option B: **TMO** has responsibility for **Rent** and **Service Charges** collection and arrears control and for collecting rent arrears due at the **STARTING DATE** of this Agreement). [Link to clause 1, option B and clause 2, options C to E].*

3.1 Within 14 days of the **STARTING DATE** the Council shall provide the **TMO** with a statement of the balance of the **Rent** and **Service Charges** account of all tenants, leaseholders or freeholders for whose **Rent** or **Service Charges** collection and arrears control the **TMO** is to be responsible under the terms of clauses 1 and 2 above. Each balance shall be as at the last rent due date before the **STARTING DATE**. The statement shall show the current rent arrears of all tenants in the **Property** (the "**Starting Date Arrears**").

3.2 The **TMO** shall take prompt action to recover **Starting Date Arrears** and arrears of **Service Charges** as provided for by the **Arrears Prevention and Control Procedure**.

3.3 All monies collected by the **TMO** from tenants, leaseholders and freeholders in arrears as at the **STARTING DATE** shall be applied, first to meet current **Rent** or **Service Charges** due after the **STARTING DATE** and then, in so far as the sum recovered exceeds the current **Rent** or **Service Charges** due, to reduce the **Starting Date Arrears** and arrears of **Service Charges** until such date as the said tenant, leaseholder or freeholder ceases to be in arrears.

3.4 In addition to the **Rents** and **Service Charges** collected by the **TMO** and payable to the Council (see clause 11 below), the **TMO** shall pay to the Council a proportion of the **Starting Date Arrears** which the **TMO** ought to be able to collect (the "**COLLECTABLE STARTING DATE ARREARS**") calculated by the formula in clause 3.5 below. The **COLLECTABLE STARTING DATE ARREARS** shall be paid to the Council in equal quarterly instalments of 5% (five percent) of the **COLLECTABLE STARTING DATE ARREARS** at the same time as the payments due under clause 11 below until the total of the **COLLECTABLE STARTING DATE ARREARS** has been paid to the Council by the **TMO**.

3.5 The **COLLECTABLE STARTING DATE ARREARS** shall be calculated as follows:

3.5.1 **Starting Date Arrears - Assessed Bad Debt Provision = COLLECTABLE STARTING DATE ARREARS**

3.5.2 The Assessed Bad Debt Provision in the above formula shall be calculated by applying the following percentages to the arrears of each tenant included in the **Starting Date Arrears**:

up to 4 weeks arrears:	0%
Above 4 weeks up to 13 weeks:	10%
Above 13 weeks up to 26 weeks:	25%
Above 26 weeks up to 39 weeks:	50%
Above 39 weeks up to 52 weeks:	75%
Above 52 weeks:	95%

3.5.3 In this clause the number of weeks arrears is calculated as the total arrears outstanding divided by the net payment due from the tenant (that is, rent plus other charges less housing benefit).

4 Collection of debts from Former Tenants

4 (*Option A: Council retains responsibility for collection of former tenant debts*).

4.1 The Council shall retain responsibility for the collection of debts from former tenants of dwellings in the **Property** who ceased to be tenants before the **STARTING DATE**.

4 Collection of debts from Former Tenants

4 *(Option B: the TMO is responsible for collection of former tenant debts).*

4.1 The **TMO** shall be responsible for the collection of debts from former tenants of dwellings in the **Property**.

4.2 Within 14 days of the **STARTING DATE** the Council shall provide the **TMO** with a statement of the balance of **Rent** accounts of all former tenants who owed arrears of rent as at the **STARTING DATE**, (the "**Former Tenant Arrears**").

4.2 The **TMO** shall take appropriate action to recover **Former Tenant Arrears** as provided for in the **Arrears Prevention and Control Procedure**.

4.3 *(Clause with 2 options).*

4.3 *(Option A: TMO follows procedure and seeks the Council's consent to write off former tenant debts if they prove not to be recoverable).*

4.3 If having taken appropriate action to recover **Former Tenant Arrears**, as set out in the **Arrears Prevention and Control Procedure**, the **TMO** concludes that the arrears owed by a former tenant cannot be recovered the **TMO** shall, in writing, request the Council's consent to write off the said former tenant's arrears. The **TMO** shall provide the Council with such information as the Council may reasonably require to show that appropriate action has been taken by the **TMO** to try to recover the arrears. The Council shall not unreasonably withhold or delay consent to a request to write off a former tenant's arrears under the provisions of this clause.

4.3 *(Option B: TMO "buys" former tenant debts for a sum equal to 5% of the amount of the debts, which it pays to the Council in equal quarterly instalments during the first three years of the operation of this Agreement. The TMO follows procedure but has the authority to write off former tenant debts if they prove not to be recoverable. This option is only available for large TMOs in excess of 2,500 units).*

4.3 In addition to the **Rents** collected by the **TMO** and payable to the Council under the terms of clause 11 below, the **TMO** shall also pay to the Council in 12 quarterly instalments a total payment equal to 5% (five percent) of the **Former Tenant Arrears**. If, having followed the procedure for recovering **Former Tenant Arrears** set out in the **Arrears Prevention and Control Procedure**, the **TMO** decides that a former tenant's arrears included in **Former Tenant Arrears** cannot be recovered the **TMO** has authority to write off the said former tenant's arrears.

5 Housing Benefit Payments

5 *(Optional clause: use only if TMO has Rent collection responsibilities). [Link to clause 1, option B and clause 2, options C to E].*

5.1 Housing benefit payments due to tenants in the **Property** shall be retained by the Council. The Council shall, for each **Rent** period and within the timescale provided for in the **Arrears Prevention and Control Procedure**, provide the **TMO** with an accurate statement of housing benefit payments payable to tenants in the **Property** by the Council. Upon receipt of such a schedule the **TMO** shall credit housing benefit payments to the relevant tenant's **Rent** account within the target timescale for crediting **Rent** receipts set out in the **Arrears Prevention and Control Procedure**.

5.2 The **TMO** shall not be liable to the Council for any arrears of **Rent** which prove to be irrecoverable because of errors in any statements of housing benefit payments provided under clause 5.1 or in the event of such payments being made incorrectly. The Council shall be responsible for recovering such incorrect payments from tenants.

6 Setting Rent Payable by Tenants

6 *(Option A: Council sets Rents equivalent to rent for similar properties in the Council's housing stock).*

6.1 The Council shall retain responsibility for setting the **Rents**. The Council shall set the **Rents** by using the same policy and principles it applies in setting the rents for similar dwellings in its housing stock which are let on similar terms and conditions as dwellings in the **Property** in accordance with the Council's Rent Setting Policy which is set out at Annex A to this chapter.

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

- a) the rental value of any improvements to the **Property** financed by the **TMO** out of the **TMO's Surplus Fund**, (see chapter 4, clause 9); or
- b) any other benefits which have or may come from the management of the **Property** by the **TMO**.

6.3 The Council and the **TMO** are agreed that for the purpose of setting the **Rents** the dwellings listed in Appendix 3 to this chapter shall be considered similar to dwellings in the **Property**.

6.4 The **TMO** may require the Council to include in the **Rents** the cost of providing a service to the **Property** which the **TMO** has, at a general meeting, decided ought to be provided. If the **TMO** requires the cost of such a service to be provided and opts

to add the provision of that service to its responsibilities for services provision (see chapter 2, clause 9) the cost included in the **Rents** for providing that service shall be included in the **ALLOWANCES** (see chapter 4, clause 1).

6 Setting Rents Payable by Tenants

6 *(Option B: TMO sets Rents and sets its own ALLOWANCES). [Link: must be used with clause 8 option B and chapter 4 clause 1 option B].*

6.1 The Council shall notify the **TMO** in writing of the **TOTAL RENT** which the Council requires from the **Property** for each rent period.

6.2 The Council shall set the **TOTAL RENT** by:

- a) calculating the rent which the Council would charge for dwellings in the **Property** by comparison with the rent charged for similar dwellings let on similar terms and conditions (see clause 6.5 below); and
- b) deducting from the sum of such rent the cost the Council would incur in fulfilling the responsibilities delegated to the **TMO** under this Agreement calculated in accordance with the calculation set out in Appendix 1 to chapter 4.

6.3 In setting the **TOTAL RENT** the Council shall not take account of:

- a) the rental value of any improvements to the **Property** financed by the **TMO** out of the **TMO's Surplus Fund** (see chapter 4, clause 9); or
- b) any other benefits which have or may come from the management of the **Property** by the **TMO**.

6.4 The Council shall give the **TMO** a written statement showing how the **TOTAL RENT** has been calculated.

6.5 The Council and the **TMO** are agreed that for the purpose of setting the **TOTAL RENT** the dwellings listed in Appendix 3 to this chapter shall be considered similar to and let on similar terms and conditions as dwellings in the **Property**.

6.6 The Council shall give the **TMO** not less than 6 weeks written notice of any increase or decrease in the **TOTAL RENT**. The notice shall be accompanied by a statement showing how the new **TOTAL RENT** has been calculated, including a schedule of rents charged for the dwellings listed in Appendix 3 to this chapter, and the rents which the Council would charge for dwellings in the **Property**. The **TMO** may increase or decrease the **Rents** payable by tenants in the **Property** to take account in full or in part of any increase or decrease in the **TOTAL RENT**.

- 6.7 Subject to the provisions of clause 8 below, the **TMO** shall set the **Rents**. The **TMO** shall, in accordance with the **Rent Setting Policy** which forms Appendix 2 to this chapter, set the **Rent** for individual dwellings at a level which would enable it to pay the Council the **TOTAL RENT**. The **Rents** shall be set in a way which complies with the obligations 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.
- 6.8 The **TMO** shall set the **Rents** payable by tenants so that its income is sufficient to enable the **TMO** to fulfil its obligations under this Agreement.

7 Setting Service Charges

7. *(Option A: The Council retains responsibility for setting Service Charges).*
- 7.1 The Council shall retain responsibility for setting **Service Charges** (other than ground rents) for the services provided to leasehold and freehold dwellings in the **Property**. **Service Charges** shall be set in accordance with the provisions of the lease or transfer.
- 7.2 Not less than 3 months before the start of each **Financial Year** the **TMO** shall give the Council a written statement of the costs which the **TMO** estimates will be incurred in that **Financial Year** in complying with the **TMO's** obligations in chapter 2, and which are recoverable wholly or in part from leaseholders or freeholders.
- 7.3 Not more than 5 months after the end of each **Financial Year** the **TMO** shall give the **Council** a written statement of the actual costs incurred in that year in complying with the **TMO's** obligations in chapter 2, and which are recoverable from leaseholders or freeholders.
- 7.4 Subject to the terms of any lease or freehold transfer, the **TMO** may require the Council to include in the **Service Charges** the cost of providing a service to the **Property** which the **TMO** has, at a general meeting, decided ought to be provided. If the **TMO** requires the cost of such a service to be provided and opts to add the provision of that service to its responsibilities for services provision (see chapter 2, clause 9) the cost included in the **Service Charges** for providing that service shall be included in the **ALLOWANCES** (see chapter 4, clause 1).

7 Setting Service Charges

- 7 *(Option B: the TMO sets Service Charges).*
- 7.1 The **TMO** is authorised to set **Service Charges** (other than ground rents) for the services provided to leasehold and freehold dwellings in the **Property**. **Service Charges** shall be set in accordance with the provisions of the lease or transfer.

- 7.2 Not less than 3 months before the start of each **Financial Year** the Council shall give the **TMO** a written statement of the costs which it estimates will be incurred in that **Financial Year** in complying with the Council's obligations in chapter 2 and which are recoverable wholly or in part from leaseholders or freeholders.
- 7.3 Not more than 5 months after the end of each **Financial Year** the **Council** shall give the **TMO** a written statement of the actual costs incurred in that **Financial Year** in complying with the **Council's** obligations in chapter 2, where these are recoverable from leaseholders or freeholders.
- 7.4 Not less than 2 months before the beginning of the **Financial Year** the **TMO** shall, in accordance with the provisions of leases and freehold transfers, calculate the **Services Charges** (other than ground rents) for the coming **Financial Year** and send to the Council a schedule of those **Service Charges**.
- 7.5 To enable the Council to provide estimates of improvements and repair costs to tenants who may wish to exercise their **Right to Buy** their dwelling, the service charges statement shall include a statement of the anticipated costs of any repairs which the **TMO** intends or may need to carry out in the following five years.

8 Approval of Rents

8 *(Option A: Council has retained responsibility for setting **Rents** [Link to clause 6, option A])*

8.1 Clause not included.

8 Approval of Rents

8 *(Option B: **TMO** has responsibility for setting rents). [Link: must be used with clause 6, option B].*

8.1 The **TMO** shall not increase or decrease **Rents** without obtaining the Council's written consent as provided for in the terms of this clause.

8.2 Not less than 5 weeks before implementing any change to **Rents** the **TMO** shall give to the Council:

- a) written notice of the intended increase or decrease proposed and the date from which the **TMO** intends that the increase or decrease shall be implemented; and
- b) a schedule of the **Rents** proposed; and
- c) a detailed statement showing how such proposed **Rents** have been calculated and the reasons for the increase or decrease proposed.

- 8.3 Within 1 week of receipt of notice under clause 8.2 above, the Council shall consider the **Rents** proposed and either:
- a) in writing, approve the **Rents** proposed, which approval shall not be unreasonably withheld or delayed; or
 - b) serve written notice that the **Rents** are not approved and the reasons for withholding approval.
- 8.4 If the Council serves a notice under clause 8.3(b), the **TMO** shall set **Rents** which are sufficient to cover the **TOTAL RENT** required by the Council under clause 6 above plus current **ALLOWANCES**. The **TMO** shall, having taken account of the reasons for the Council's refusal, submit further **Rent** proposals to the Council, which proposals shall also be considered under the terms of this clause.

9 Notification of Rent and Service Charge Changes

- 9 *(Option A: Council notifies tenants direct and notifies TMO at the same time). [Link to **Rent and Service Charges** setting options, clause 6, option A and clause 7, option A].*
- 9.1 The Council shall notify tenants, leaseholders and freeholders of any increase or decrease in **Rents** or **Service Charges**.
- 9.2 The Council shall notify the **TMO** in writing of any increase or decrease in **Rents** or **Service Charges** at the same time as tenants, leaseholders or freeholders are notified.

9 Notification of Rents and Service Charges Changes

9 *(Option B: **Rents and Service Charges** fixed by the Council, Council notifies TMO, TMO notifies tenants and leaseholders). [Links to **Rent and Service Charges** setting options, clause 6, option A and clause 7, option A].*

9.1 The TMO shall notify tenants, leaseholders and freeholders of any increase or decrease in **Rents** or **Service Charges**.

9.2 The Council shall give the TMO not less than six weeks written notice of any increase or decrease in **Rents** or **Service Charges**, or two weeks plus such period of notice longer than four weeks as may be required by a tenancy, lease or freehold transfer. Such a notice shall include a schedule showing the new **Rents** or **Service Charges** payable by each tenant, leaseholder or freeholder affected by the increase or decrease and the date from which the new **Rents** or **Service Charges** are to be paid. Upon receipt of such a notice the TMO shall take such action as may be necessary to implement the increase or decrease in **Rents** or **Service Charges**.

9.3 The TMO shall give tenants, leaseholders and freeholders not less than four weeks written notice of any increase or decrease in **Rents** or **Service Charges** (or one months' notice if the rental period is monthly) or such longer period of notice as may be required by a tenancy, lease or freehold transfer.

9 Notification of Rents and Service Charges Changes

9 *(Option C: **Rents** are set by the Council, but **Service Charges** are set by the TMO. The Council notifies the TMO of **Rent** increase required, the TMO notifies tenants, leaseholders and freeholders). [Links to **Rent** setting option, clause 6, option A, and **Service Charges** setting option, clause 7, option B].*

9.1 The TMO shall notify tenants, leaseholders and freeholders of any increase or decrease in **Rents** or **Service Charges**.

9.2 The Council shall give the TMO not less than six weeks written notice of any increase or decrease in **Rents**. Such a notice shall include a schedule showing the new **Rents** payable by each tenant affected by the increase or decrease and the date from which the new **Rents** are to be paid. Upon receipt of such a notice the TMO shall take such action as may be necessary to implement the increase or decrease in the **Rents**.

9.3 The TMO shall give tenants, leaseholders and freeholders not less than four weeks written notice of any increase or decrease in **Rents** or **Service Charges** (or one month's notice if the rental period is monthly) or such longer period of notice as may be required by a tenancy, lease or freehold transfer.

9 Notification of Rents and Service Charges Changes

9 *(Option D: TMO sets Rents and Service Charges). [Link to Rent setting options, clause 6, option B and clause 7, option B].*

9.1 The **TMO** shall notify tenants, leaseholders and freeholders of any increase or decrease in **Rents** or **Service Charges**.

9.2 The **TMO** shall give tenants, leaseholders or freeholders not less than four weeks written notice of any increase or decrease in **Rent** or **Service Charges** payable (or one months' notice if the rental period is monthly) or such longer period of notice as may be required by a tenancy, lease or freehold transfer.

10 **Serving the Service Charge Notices Required by the Landlord and Tenant Act 1985**

10 *(Option A: the Council retains responsibility for complying with the provisions of the Landlord and Tenant Act 1985 and, in particular, for serving service charge notices on leaseholders required by Section 20 of the Landlord and Tenant Act 1985).*

10.1 Save for the **TMO's** obligations in this clause, the Council shall be responsible for complying with the provisions of the Landlord and Tenant Act 1985 governing **Service Charges** where there is a recognised tenants' association. In particular, the Council shall be responsible for serving on leaseholders (if any) whose **Service Charges** may vary according to the cost of provision of services notices required by section 20 of the Landlord and Tenant Act 1985.

10.2 To ensure that the Council is able to provide annual statements of **Service Charges** to leaseholders, the **TMO** shall within such timescale as the Council reasonably requires in order fulfil its obligations to leaseholders set out in their leases give to the Council a written statement of:

- a) the actual costs incurred by the **TMO** in complying with the **TMO's** obligations in chapter 2 during the current **Financial Year** and an estimate of service costs to be incurred for the remainder of the **Financial Year**; and
- b) a budget of the costs to be incurred by the **TMO** in complying with the **TMO's** obligations in chapter 2 during the coming **Financial Year**; and
- c) such other information as the Council may reasonably require.

10.3 If, in complying with its obligations in chapter 2, the **TMO** will for any single item of works which may form part of a service charge payable by a leaseholder incur a cost of £50 per dwelling or £1,000, whichever is the greater, (or such other sums prescribed under the Landlord and Tenant Act 1985) the **TMO** shall obtain not less than two estimates for the works, one of which must be from a firm or contractor wholly unconnected with the Council or the **TMO**.

- 10.4.1 On receiving the estimates for the works the **TMO** shall give the Council written notice (the "**Services Notice**") which:
- a) specifies the works proposed; and
 - b) informs the Council which estimate the **TMO** proposes to accept; and
 - c) requests the Council's consent to appoint the contractor the **TMO** wishes to appoint to carry out the works.
- 10.4.2 The **TMO** shall also, with the **Services Notice**, provide the Council with copies of the estimates obtained. Subject to the provisions of clauses 10.5 and 10.6 below, the Council shall not unreasonably withhold consent to the carrying out of works or to the appointment of a contractor specified in a **Services Notice**.
- 10.5 The Council shall, in addition to complying with other requirements of Section 20 (5) of the Landlord and Tenant Act 1985, within 7 days of receiving the **Services Notice** serve notice (the "**Leaseholders Notice**") on all leaseholders (if any) in the **Property** whose **Service Charges** are regulated by the provisions of the Landlord and Tenant Act 1985 which:
- a) describes briefly the works and informs the leaseholder of the intention to carry them out;
 - b) summarises the estimates or provides copies of them;
 - c) informs the leaseholder of the right to inspect and take copies of a detailed specification of the works and of the estimates, where and when they may be inspected and invites comments on them; and
 - d) informs the leaseholder of the name and address of the officer of the Council to whom comments can be sent and the date (not less than one month after the **Leaseholders Notice** was served on them by the Council) by which observations and comments must be made.
- 10.6 Within 21 days after the date stated in the **Leaseholders Notice** by which comments on the proposed works must be made the Council shall, having taken account of any comments made by leaseholders, inform the **TMO** in writing that it:
- a) approves the **TMO's** proposal to carry out the works; or
 - b) requires the **TMO** to amend the works proposed or to appoint one of the other contractors from whom an estimate was obtained and the reasons for the Council's requirement; or
 - c) refuses the **TMO's** proposal to carry out the works for reasons stated.

10.7 For the purposes of **Service Charges** the Council recognises the **TMO** as a recognised tenants' association and acknowledges that the **TMO** has the rights granted to a recognised tenants' association by the Landlord and Tenant Act 1985 and this Agreement shall be the written notice required by Section 29 of the Landlord and Tenant Act 1985.

10 **Serving the Service Charge Notices Required by the Landlord and Tenant Act 1985**

10 *(Option B: the **TMO** has responsibility for complying with the provisions of the Landlord and Tenant Act 1985 and, in particular, for serving service charge notices on leaseholders required by Section 20 of the Landlord and Tenant Act 1985).*

10.1 Save for the Council's obligations in this clause, the **TMO** shall be responsible for complying with the provisions of the Landlord and Tenant Act 1985 governing **Service Charges** where there is a recognised tenants' association. In particular, the **TMO** shall be responsible for serving on leaseholders (if any) whose **Service Charges** may vary according to the cost of provision of services notices required by section 20 of the Landlord and Tenant Act 1985.

10.2 To ensure that the **TMO** is able to provide annual statements of **Service Charges** to leaseholders, the Council shall within such timescale as the **TMO** reasonably requires in order to fulfil the obligations to leaseholders set out in their leases give to the **TMO** a written statement of:

- a) the actual costs incurred by the Council in complying with the Council's obligations in chapter 2 during the current **Financial Year** and an estimate of service costs to be incurred for the remainder of the **Financial Year**; and
- b) a budget of the costs to be incurred by the Council in complying with the Council's obligations in chapter 2 during the coming **Financial Year**; and
- c) such other information as the **TMO** may reasonably require.

10.3 If in complying with its obligations in chapter 2 the Council will for any single item of works which may form part of a service charge payable by a leaseholder incur a cost of £50 per dwelling or £1,000, whichever is the greater (or such other sums prescribed under the Landlord and Tenant Act 1985), the Council shall (as required by Section 20 of the Landlord and Tenant Act 1985) obtain not less than two estimates for the works, one of which must be from a firm or contractor wholly unconnected with the Council or the **TMO**. On receiving the estimates for the works the Council shall give the **TMO** written notice (the "**Services Notice**") of the works proposed and the estimate the Council proposes to accept. The Council shall also provide the **TMO** with copies of the estimates obtained.

10.4 If in complying with the **TMO's** obligations in chapter 2 the **TMO** will in respect of any single item of works which may form part of a service charge payable by a leaseholder incur a cost of £50 per dwelling or £1,000, whichever is the greater (or such other sums prescribed under the Landlord and Tenant Act 1985), the **TMO** shall obtain not less than two estimates for the works, one of which must be from a firm or contractor wholly unconnected with the Council or the **TMO**.

10.5 If:

- a) the **TMO** receives a **Services Notice** from the Council; or
- b) the **TMO** obtains estimates under clause 10.4 above;

the **TMO** shall within 7 days of receiving the **Services Notice** or obtaining the estimates serve notice (the "**Leaseholders Notice**") on all leaseholders in the **Property** whose **Service Charges** are regulated by the provisions of the Landlord and Tenant Act 1985 which:

- i) describes briefly the works and informs the leaseholder of the intention to carry them out;
- ii) summarises the estimates or provides copies of them;
- iii) informs the leaseholder of the right to inspect and take copies of a detailed specification of the works and of the estimates, where and when they may be inspected and invites comments on them;
- iv) informs the leaseholder of the name and address of the officer of the **TMO** to whom comments can be sent and the date (not less than one month after the **Leaseholders Notice** was served on them by the **TMO**) by which observations and comments must be made.

10.6 If the **Leaseholders Notice** refers to services provided by the Council the **TMO** shall, within 21 days of the date specified in the **Leaseholders Notice**, provide the Council with copies of any comments made by leaseholders and any comments the **TMO** may wish to make about the works proposed by the Council in order that the Council may decide whether or not to carry out the works proposed. In reaching its decision the Council shall take due and proper account of the comments made by leaseholders and the **TMO** and within 1 month of receiving comments under the terms of this clause give to the **TMO** a reasoned written response to comments made.

10.7 Within one month of the end of the **TMO's Financial Year** the Council shall give the **TMO** a written statement of the actual costs incurred (including administrative costs) in providing the **Council's Services** in the past year.

- 10.8 Not more than two months after the end of the **TMO's Financial Year** the **TMO** shall prepare a statement of the actual service costs (including administrative costs) incurred by the Council and the **TMO** in the past year. The service costs statement shall be certified as correct by a qualified auditor. The **TMO** shall give the Council a copy of the audited service costs statement as soon as it is available.
- 10.9 Nothing in this clause shall make the **TMO** liable for any losses incurred by the Council if, the **TMO** having complied with its obligations under this clause, the cost of providing services is greater than the **Service Charges** which may lawfully be recovered from tenants or leaseholders.
- 10.10 For the purpose of **Service Charges** the Council recognises the **TMO** as a recognised tenants' association and acknowledges that the **TMO** has the rights granted to a recognised tenants' association by the Landlord and Tenant Act 1985 (as amended) and this Agreement shall be the written notice required by Section 29 of the Landlord and Tenant Act 1985.

11 Payment to the Council of Rent due and Service Charges Collected

11 *(Option A: no clause needed because the Council continues to collect the rent). [Link to clause 1, option A].*

11.1 Clause not included.

11 Payment to the Council of Rent due and Service Charges Collected

11 *(Option B: Council sends rent demand to TMO). [Link to clause 1, option B].*

11.1 The **TMO** shall pay to the Council the **Rents** and **Service Charges** as provided for and in the manner set out in this clause.

11.2 At the end of March, June, September and December each year the Council shall send a rent demand to the **TMO**. The rent demand shall show the net amount of **Rents** ["**the Net Rent**"] due from the **TMO** for the previous quarter. The **Net Rent** shall be calculated as follows:

11.2.1 the **Rents** due for each rent period multiplied by the number of rent due dates in the quarter less:

- a) any **Rents** waived in accordance with clause 13 of this chapter;
- b) any housing benefit payments which the Council has notified the **TMO** are due in the quarter to tenants in the **Property** (see clause 5 above);

- c) in the first quarter of each **Financial Year** the **VOIDS PERCENTAGE** for the coming year calculated as provided for in clause 12 of this chapter;
- d) *(Optional clause use only if chapter 4, clause 2, option D is used);*
- d) the **ALLOWANCES** for the following quarter (calculated as provided for in clause 1 of chapter 4);
- e) *Clause with 3 options.*
- e) *(Option 1: use only if clause 2, options A, B or E are used).*
- e) clause omitted.
- e) *(Option 2: use only if clause 2, option C is used).*
- e) the **Rent** from any tenant whose **Rent** account has been handed back to the Council under the terms of clause 2 or **Rent** recovered by the Council (see clause 2.4 iii).
- e) *Option 3: use only if clause 2, option D is used).*
- e) the **Rent** due in any case where the **TMO** has requested that notice be served or action taken under the terms of clause 2 above and the Council has not complied with the **TMO's** request.

11.3.1 The **TMO** shall pay the **Net Rent** to the Council within 14 days of receipt of the quarterly rent demand together with **Service Charges** collected (including any arrears of service charges collected), except that the **TMO** shall be entitled to delay payment to the Council of the rent due from any tenant in arrears included in the **Net Rent** demanded where the **TMO** has evidence which reasonably shows that the tenant has made a valid housing benefit claim to the Council and the Council has not determined the eligibility of the tenant for housing benefit within twelve weeks of the date on which the housing benefit claim was submitted to the Council.

*(Drafting note, add the following sentence if clause 2 option D is used: In addition the **TMO** shall pay to the Council any **Rent** which is collected in any case where the Council has not complied with the **TMO's** request to take action in that arrears case).*

11.3.2 If the **TMO** exercises the right in clause 11.3.1 above to delay the payment of rent arrears arising from delays in determining housing benefit applications, the **TMO** shall pay any part of the delayed sum which is not covered by housing benefit to the Council as soon as the

TMO is notified by the Council that the delayed housing benefit claim has been determined.

11.4 *(Optional clause: use only with chapter 4, clause 2, option D).*

11.4 If the **Net Rent** on the rent demand for any quarter shows a credit due to the **TMO** (that is if total deductions exceed the total **Rents** payable) the Council shall pay the amount due to the **TMO** within one month of the end of the quarter to which the rent demand refers.

12 Void and Bad Debt Allowances

12 *(Option A: clause not included because TMO has no letting or rent arrears control responsibilities). [Links to clause 2, options A and B and to chapter 5, clause 2, option A].*

12.1 Clause not included.

12 Void and Bad Debt Allowances

12 *(Option B: TMO has letting responsibility but no rent arrears control responsibility, voids allowance only needed). [Link to clause 2, options A and B and chapter 5 clause 2 options B and C].*

12.1 The **VOIDS PERCENTAGE** of the **Rents** payable to the Council by tenants in the **Property** during each **Financial Year** shall be a budget for rent losses from dwellings in the **Property** which remain vacant ("**Void Losses**").

12.2 Within 3 months of the end of each **Financial Year** the Council shall calculate the actual **Void Losses** during the past **Financial Year** and notify the **TMO**.

12.3 If the **Void Losses** are less than the **VOIDS PERCENTAGE** the difference between the **Void Losses** and the **VOIDS PERCENTAGE** shall be paid by the Council to the **TMO** within 1 month of the notification under clause 12.2.

12.4 If the **Void Losses** are greater than the **VOIDS PERCENTAGE** the difference between the **Void Losses** and the **VOIDS PERCENTAGE** shall be paid by the **TMO** to the Council within 1 month of the notification under clause 12.2 unless the **Void Losses** are waived under the terms of clause 13 below.

12 Void and Bad Debts Allowances

12 *(Option C: TMO has letting and arrears control responsibility, voids and bad debts allowance needed). [Link to clause 2, options C to E and chapter 5 clause 2 options B and C].*

12.1 In calculating the **Net Rent** at the end of the first quarter of each **Financial Year** the **VOIDS PERCENTAGE** of the total money collectable by the **TMO** on behalf of the Council shall be deducted as provided in clause 11.2.1c as a provision for both rent losses from dwellings in the **Property** which remain vacant while reletting occurs and bad debts from **Rent** and **Service Charges** arrears which the **TMO** is unable to recover.

12.2 If the total amount collectable by the **TMO** from the **Property** changes during the year the **VOIDS PERCENTAGE** shall be adjusted accordingly. The adjustment shall be made in the rent demand under clause 11.2 at the end of the quarter in which the **Rents** or **Service Charges** were increased or decreased.

- 12.3 If the actual voids and bad debts during any year are less than the **VOIDS PERCENTAGE** the **TMO** shall be entitled to keep the balance of the **VOIDS PERCENTAGE**. If the actual voids and bad debts during any **Financial Year** are greater than the **VOIDS PERCENTAGE** the **TMO** shall be liable for the additional loss to the Council unless the Council expressly waives liability under the terms of clause 13 below.

13 Voids Waiver

13 *(Option A: clause not included because TMO has no letting or rent arrears control responsibilities). [Links to clause 2, options A and B and to chapter 5, clause 2, option A].*

13.1 Clause not included.

13 Voids Waiver

13 *(Option B: TMO has lettings responsibility only). [Link to clause 2, options A and B and clause 12, option B]*

13.1 The **TMO** shall not be liable for any **Void Losses** which occur for the following reasons:

- a) the dwelling is void and unfit for occupation because of damage by fire, or other risks covered by the Council's buildings insurance;
- b) the dwelling is void and unfit for occupation because the Council has failed to comply with its repairing obligations set out in chapter 2;
- c) the dwelling is void because the Council has failed to nominate potential tenants to the **TMO** within the timescales set out in chapter 5; or
- d) the **TMO** has, with the consent of or under instructions from the Council, kept a dwelling or dwellings vacant for major repairs or improvements or for any other reason.

13.2 The **TMO** shall give written notice to the Council claiming a voids waiver as soon as the **TMO** is aware that one of the circumstances stated in 13.1 above has occurred.

13.3 The Council shall waive **Void Losses** in excess of the **VOIDS PERCENTAGE** provided for in clause 12 if, in the reasonable opinion of the Council, the additional losses have occurred for any of the reasons set out in clause 13.1.

13 Rent Waiver

- 13 *(Option C: TMO has lettings and arrears control responsibility). [Link to clause 2 options C to E and clause 12 option C].*
- 13.1 The **TMO** shall not be liable to pay over to the Council **Rent** or **Service Charges** in respect of any dwelling in the **Property** which it is unable to collect for any of the following reasons:
- a) the dwelling is void and unfit for occupation because of damage by fire or other risks covered by the Council's buildings insurance;
 - b) the dwelling is unfit for occupation because the Council has failed to comply with its repairing obligations set out in chapter 2;
 - c) the dwelling is void because the Council has failed to nominate potential tenants to the **TMO** within the timescale set out in chapter 5;
 - d) the **TMO** has, with the consent of or under instructions from the Council, kept a dwelling or dwellings vacant for major repairs or improvements or for any other reason;
 - e) *(clause with 3 options).*
 - e) *(Option 1: use only if clause 2, options A, B or E are used).*
 - e) clause omitted.
 - e) *(Option 2: use only if clause 2, option C is used).*
 - e) the collection of **Rent** or **Service Charges** arrears in a particular case has been handed back to the Council (see sub-clause 2.4).
 - e) *Option 3: use only if clause 2, option D is used).*
 - e) the Council has failed to serve Notice Seeking Possession or Notice to Quit within the time limit set in this Agreement (see sub-clause 2.3) or has exercised the discretion not to serve notice (see sub-clause 2.5).
- 13.2 The **TMO** shall give written notice to the Council claiming a rent waiver under this clause as soon as the **TMO** is aware that one of the circumstances stated in clause 13.1 above has occurred. The **TMO** shall also give written notice to the Council as soon as the **TMO** is able to resume **Rent** collection.
- 13.3 The Council shall waive **Rent** losses in excess of the **VOIDS PERCENTAGE** provided for in clause 12 if, in the reasonable opinion of the Council, the additional losses have occurred for any of the reasons set out in clause 13.1.

CHAPTER 3

APPENDIX 1

Arrears Prevention and Control Procedure

CHECKLIST

The contents of this Appendix should include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.

- 1 Rent and service charge collection (if clause 1 option B is chosen)



State rent and service charge collection arrangements

For example:

- *link to terms of tenancy agreement and lease(s)*
- *rent notification and rent due dates*
- *service charge invoicing and payment dates*
- *acceptable methods of payment*
- *information required from tenants when changing payment arrangements*
- *information provided to tenants on rent /charge balances*
- *link to posting and reporting arrangements in Financial Procedures in Appendix 2 of chapter 4 ("the Financial Procedures").*

- 2 Advice on welfare benefits (If clause 2, options C,D or E chosen)



Set out who will give advice on welfare benefits generally and how assistance with Housing Benefit claims/renewals will be dealt with.

- 3 Housing Benefit (If clause 2, options C, D or E chosen)



Set out arrangements for handling Housing Benefit

For example

- *who will be responsible for ensuring good communication with the Housing Benefit section, and how this will be achieved*
- *how often the TMO will receive statements of Housing Benefit payable to tenants*
- *who will check that Housing Benefit is correctly credited to tenants accounts, and how any error in statements or entitlement calculations will be dealt with*
- *link to Financial Procedures*

- 4 Collection of rent arrears (If clause 2, options C,D or E chosen).



Set out procedures to be followed when a tenant first goes into arrears

For example:

- *levels of arrears when specific action must be taken*
- *the number of letters and visits and at what stages*
- *proposed methods to be used to promote payment of arrears (such as payment by instalments)*
- *how individual cases will be monitored*
- *the involvement of debt counsellors, who will carry out this role and at what points*



Set out action in serious arrears cases (not required if clause 2 option A is chosen)

For example (If clause 2 option B chosen):

- *Set out the point at which the TMO will approve the service of a Notice Seeking Possession ("NSP")*
- *Set out the criteria to be used when deciding whether a case should be taken to court*
- *Set out criteria on which decisions to propose eviction will be made*

For example (If clause 2 option C chosen):

- *State how the process of handing back serious arrears cases to the Council is to be managed*
- *Set out any key points at which consultation with the TMO will still be required on such cases*

For example (If clause 2 option D chosen):

- *Set out the point at which the Council will be requested to serve a NSP*
- *Set out the criteria to be used when deciding whether the Council should be asked to commence court proceedings*
- *Set out what contact will be made with the tenant if they are taken to court, and who will contact them*
- *Set out who will be responsible for monitoring cases where suspended possession orders are granted*
- *Set out the role of the TMO in evictions*
- *Set out what advice should be given to tenants prior to eviction and who will be responsible for ensuring this is done*
- *List monitoring information required by the Council throughout the arrears procedure*

For example (If clause 2 option E chosen):

- *Set out the point at which a NSP will be served*
- *State the method by which NSPs should be served*
- *Set out the criteria to be used when deciding whether cases should be taken to court and what authorization is required*

- *Set out what contact will be made with the tenant if they are taken to court, and who will contact them*
- *Who will prepare information for court cases and how this should be done*
- *State who will attend court hearings*
- *Set out who will be responsible for monitoring cases where suspended possession orders are granted*
- *Set out what criteria will be used in deciding on evictions, and who authorises evictions*
- *Set out what advice should be given to tenants prior to eviction and who will be responsible for ensuring this is done*
- *List monitoring information required by the Council throughout the arrears procedure*

APPENDIX 2

Rent Setting

CHECKLIST

The contents of this Appendix should include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.

1 Rent Setting

Set out basis for calculating total rental income required

For example:

- **Net Rent** required by local authority
- expenditure required to carry out TMO obligations under the management agreement
- link to budget preparation and approval of overall service levels and cost
- Other TMO income receivable
- Additional costs over those provided for in the agreement such as additional void and bad debt provision required
- the need to maintain adequate levels of reserves
- required consultation with all affected residents over services

Set out considerations to be taken into account in balancing expenditure needs against net income receivable

For example:

- impact on low income tenants
- availability of benefit to cover rent increases
- comparability with local authority, housing association and private sector average rents for similar dwellings
- effect on local authority Housing Revenue Account ("HRA")
- scope for increasing rents to provide a contingency provision or to fund improvements
- scope for savings to allow reduction in rent income requirements
- transitional arrangements from existing local authority rents such as maximum increase/decrease in any year expressed in absolute or percentage terms and time period over which full transition is to be achieved
- legal obligations, tenancy agreement terms

Identify factors to be taken into account in setting the base rent for each dwelling within the Property

For example:

- location

- *type of housing provided*
- *number of rooms*
- *amenities*
- *state of repair*
- *services provided including those for which the rent should reflect full cost recovery of items such as heating, concierge schemes, communal aerials and specify the basis of apportionment*

2. Subsequent Rent Reviews



Identify relevant factors to be taken into account in reviewing rent levels

For example:

- *forthcoming year budget and projected outturn figures for current year including those for services where the policy is full cost recovery*
- *aggregate planned spending less other non-rent income*
- *rents receivable after allowing for losses through bad debts and voids*
- *available surpluses to mitigate rent increases*
- *accrued deficits to be recovered from current and future income*
- *the need to maintain adequate levels of reserves*



Set out the considerations to be taken in account in reviewing necessary percentage variations in rent and other charges

For example:

- *guideline rent increases in HRA subsidy determination by Secretary of State for the local authority*
- *actual increase in local authority rents in percentage or absolute terms*
- *increase in earnings from available indices*
- *proportion of tenants actually bearing increase and eligibility of tenants on benefit for increase to be covered by housing benefit*
- *rents of comparable local authority, housing association and private sector stock*
- *full resident consultation and preferences for the balance between service and rent levels*
- *potential for extra costs falling on the local authority from unsubsidised housing benefit*
- *legal and tenancy agreement obligations*

APPENDIX 3

PART 1 (if clause 6 option A chosen only)



Schedule of similar dwellings for Rent Calculation

PART 2



Schedule of similar dwellings to be used as `comparable' properties in reassessing the ALLOWANCES (if clause 6 option A & chapter 4 clause 1 option A is chosen)



Schedule of similar dwellings to be used as `comparable' properties in reassessing the calculated deductions under clause 6 option B (if clause 6 option B & chapter 4 clause 1 option B are chosen)

ANNEX A

(if Clause 6 Option A is used)

The Council's rent setting policy

CHAPTER 4

FINANCIAL MANAGEMENT

1 The Calculation of Allowances

1 *(Option A: ALLOWANCES calculated in accordance with method of calculation set out in Appendix 1).*

1.1 The Council shall be liable to pay to the **TMO** for fulfilling the responsibilities undertaken by the **TMO** the **ALLOWANCES** which are the sums calculated in accordance with the calculation set out in Appendix 1 together with the amount (if any) due to the **TMO** in respect of additional services included at the **TMO**'s request in the **Rent** or **Service Charge** in accordance, where applicable, with chapter 3, clauses 6 and 7.

1 The Calculation of Allowances

1.1 *(Option B: TMO sets the ALLOWANCES [Link: must be used with chapter 3, clause 6, option B]).*

1.1 The **TMO** shall determine the **ALLOWANCES** it reasonably requires to fulfil its obligations under this Agreement during each **Financial Year**.

1.2 The Council shall be liable to pay to the **TMO** the **ALLOWANCES** for fulfilling the responsibilities undertaken by the **TMO** under the terms of this Agreement. Not less than 2 months before the beginning of each **Financial Year** the **TMO** shall in writing inform the Council of the **ALLOWANCES** it requires for the coming **Financial Year**. The **TMO** shall also, at the same time, inform the Council of the reasons for any increase or decrease in the **ALLOWANCES**.

1.3 The **TMO** shall give reasoned consideration to any comments received from the Council about the level of **ALLOWANCES**.

2 Payment of ALLOWANCES

2 *(Option A: ALLOWANCES retained by the Council to meet costs authorised by the TMO).*

2.1 The Council shall retain the **ALLOWANCES**. As provided for in clause 3 of this chapter, the Council shall meet any costs properly incurred by the **TMO** under this Agreement.

2 Payment of ALLOWANCES

2 (*Option B: ALLOWANCES paid monthly in advance to the TMO*).

2.1 On the first day of each month the Council shall pay to the **TMO** one twelfth of the **ALLOWANCES**.

2.2 If this Agreement ends during the course of a **Financial Year** the **ALLOWANCES** for that year shall be calculated as follows:

$$\frac{\text{the ALLOWANCES} \quad \times \quad \text{number of days in year before Agreement ended}}{365}$$

365

2.3 If the **TMO** is registered for Value Added Tax, Value Added Tax at the standard rate shall be charged to the Council on the **ALLOWANCES** payable to the **TMO** under this Agreement.

2 Payment of ALLOWANCES

2 (*Option C: ALLOWANCES payable quarterly in advance to the TMO*).

2.1 On the first day of April, July, October and January the Council shall pay to the **TMO** one quarter of the **ALLOWANCES**.

2.2 If this Agreement ends during the course of a **Financial Year** the **ALLOWANCES** for that year shall be calculated as follows:

$$\frac{\text{the ALLOWANCES} \quad \times \quad \text{number of days in year before Agreement ended}}{365}$$

365

2.3 If the **TMO** is registered for Value Added Tax, Value Added Tax at the standard rate shall be charged to the Council on the **ALLOWANCES** payable to the **TMO** under this Agreement.

2 Payment of ALLOWANCES

2 (*Option D: The TMO is authorised to retain ALLOWANCES from rents collected on behalf of the Council*) [*Link to rent collection clause 2, options C to E in chapter 2 and to chapter 3, clause 11, option B*].

2.1 The **TMO** shall retain from the **Rents** and **Service Charges** payable to the Council in each quarter under the terms of clause 11 of chapter 3 the **ALLOWANCES** for the following quarter calculated as provided in clause 1 above.

2.2 If this Agreement ends during the course of a **Financial Year** the **ALLOWANCES** for that year shall be calculated as follows:

$$\frac{\text{the ALLOWANCES} \quad \times \quad \text{number of days in year before Agreement ended}}{365}$$

365

2.3 If the **TMO** is registered for Value Added Tax, Value Added Tax at the standard rate shall be charged to the Council on the **ALLOWANCES** payable to the **TMO** under this Agreement.

2.4 If the **Rents** and **Service Charges** payable to the Council are insufficient to cover the **ALLOWANCES** the balance shall be paid to the **TMO** under clause 11 of chapter 3 above.

3 Payment of Expenses

3 *(Option A: TMO has management and maintenance budget within the Council's Housing Revenue Account, payment for costs incurred met by Council).*

3.1 The Council shall provide the **TMO** with **THE FLOAT** as a cash float for administrative expenses. The Council and the **TMO** may agree to increase or decrease **THE FLOAT**.

3.2 The **TMO** is authorised to meet the following expenses from **THE FLOAT**:

- a) costs of arranging and holding meetings of the **TMO** (including creche provision);
- b) travel costs of the Committee and members on the **TMO's** business;
- c) minor administrative expenses such as postage, reimbursement of Committee for phone calls made on behalf of the **TMO**;
- d) members' costs in attending training courses and conferences approved by the **TMO**; and
- e) any other reasonable costs of the **TMO** in administering its affairs or in using its **Surplus Fund** (see clause 9 below) for any purpose permitted by the **TMO's** constitution.

- 3.3 The **TMO** is authorised to incur expenses to fulfil its obligations under this Agreement provided that total costs incurred do not exceed the **ALLOWANCES**.
- 3.4 The **TMO** shall reclaim from the Council any expenses met from **THE FLOAT**. Claims sent to the Council shall be supported by expenditure vouchers and receipts signed by the member who has claimed expenses and by the Treasurer or other authorised officer of the **TMO**. The Council shall reimburse the **TMO** for expenses properly met out of **THE FLOAT**.
- 3.5 The **TMO** shall issue written works orders for any repair ordered. The **TMO** shall also issue written orders for any goods or services required by the **TMO** in fulfilling its management responsibilities. Works orders or orders for goods and services shall be authorised within the limits for authorising expenditure set out in the **TMO's** Financial Procedures which form Appendix 2 to this chapter (the "**Financial Procedures**").
- 3.6 The **TMO** shall receive invoices for repairs, goods and services ordered by the **TMO**. Invoices shall be authorised within the limits set out in the **Financial Procedures**.
- 3.7 The **TMO** shall pass authorised invoices to the Council for payment. Invoices shall be authorised and passed to the Council within 14 days of receipt or, if an invoice is disputed by the **TMO**, within 14 days of the dispute being resolved. The Council shall pay authorised invoices within 14 days of the Council receiving the invoice.
- 3.8 The **TMO** may also give the Council written instructions to meet management expenses incurred by the **TMO** in fulfilling its management or maintenance responsibilities under this Agreement. Written instructions shall:
- a) state the nature of the expense;
 - b) state to whom the payment is to be made;
 - c) be authorised within the limits for authorising expenditure set out in the **Financial Procedures**; and
 - d) be sent to the Council not less than 14 days before the expense is to be met.

3 Payment of Expenses

- 3 *(Option B: TMO has bank account, receives ALLOWANCES from the Council (or retains them from Rent collected) and meets its costs direct). [Link to clause 4 option B]).*
- 3.1 The **TMO** is authorised to incur expenses to fulfil its obligations under this Agreement.

- 3.2 The **TMO** shall issue written works orders for any repairs or other works ordered. The **TMO** shall also issue written orders for any goods or services required by the **TMO** in fulfilling its management responsibilities. Works orders or orders for goods and services shall be authorised within the limits set out in the **TMO**'s Financial Procedures which form Appendix 2 to this chapter (the "**Financial Procedures**").
- 3.3 The **TMO** shall receive invoices for repairs, goods and services ordered by the **TMO**. Invoices and other expenditure authorised in accordance with the **Financial Procedures** shall be met by the **TMO** from the **ALLOWANCES** paid to the **TMO** and held in a bank account for this purpose (see clause 4 below).

4 The TMO's Banking Arrangements

4 *(Option A: Simple arrangements because Council pays management and maintenance expenses). [Link: must be used with clause 2 option A and clause 3 option A]).*

4.1 The **TMO** may open an account at a bank or building society of its choice. The account may be used by the **TMO** to meet expenses from **THE FLOAT** provided by the Council to the **TMO** under the terms of clause 3 above.

4.2 If the **TMO** opens a bank or building society account the **TMO** shall inform the Council of:

- a) the name of the bank or building society and the branch at which the account is held;
- b) the account name and number;
- c) the names and addresses of the persons authorised to act as signatories on the account (including any changes to those signatories).

4.3 Any account which contains money which belongs to the Council or would belong if this Agreement were to end shall bear the name of the Council in the title of the account.

4 The TMO's Banking Arrangements

4 *(Option B: TMO has such accounts as it sees fit, keeps accounts at one branch of chosen bank or building society and notifies Council of account details). [Link to clause 3, option B above].*

4.1 The **TMO** shall open such bank or building society accounts as it considers necessary for the good management of its finances ("**The Accounts**").

- 4.2 Except for a Girobank account (if any) for receiving rents, **The Accounts** shall be at a bank or building society chosen by the **TMO**.
- 4.3 *(Optional clause: omit unless the TMO has responsibility for Major Works (see chapter 2, clause 6). [Link: must be used if chapter 2, clause 6 option C is used].*
- 4.3.1 If the **ALLOWANCES** include provision to meet the costs of **Major Works** (see chapter 2 clause 6) one of the **Accounts** shall be an account held in the joint names of the Council and the **TMO** in which such provision shall be accumulated until such time as payments for **Major Works** are due (the "**Major Works Account**"). The signatories to the **Major Works Account** shall be two signatories nominated by the Council and two signatories nominated by the **TMO**. Payments from the **Major Works Account** shall be made only on the authority of two of the nominated signatories, one of whom must be a signatory of the Council. Provided the Council has approved the placing of any contract for **Major Works** (see chapter 2, clause 6.4), the Council's and the **TMO's** nominated signatories shall release payments from the **Major Works Account** at the time such payments properly fall due.
- 4.3.2 If the application of chapter 2 clause 6.2 results in the **TMO** no longer being under an obligation to carry out certain **Major Works** the **TMO** shall, at the direction of the Council, pay back to the Council such sums held in the **Major Works Account** which were paid to the **TMO** to carry out those works.
- 4.4 The **TMO** shall inform the Council of:
- a) the name of the bank or building society and the branch at which **The Accounts** are held;
 - b) the names and numbers of **The Accounts**; and
 - c) the names and addresses of the persons authorised to act as signatories on **The Accounts**.
- 4.5 The **TMO** shall inform the Council in writing of any changes in the persons authorised to act as signatories on **The Accounts** at the same time as it notifies the bank or building society of the changes.
- 4.6 The **TMO** shall inform the Council in writing of the account name and number into which the Council shall pay the **ALLOWANCES** under the terms of clauses 1 and 2 of this chapter.
- 4.7 Any account which contains money which belongs to the Council or would belong if this Agreement were to end shall bear the name of the Council in the title of the account.

5 Financial Control and Accounting Standards

- 5.1 The **TMO** shall conduct its financial affairs in accordance with the **Financial Procedures** which form Appendix 2 to this chapter.
- 5.2 The **TMO** shall account for income and expenditure in accordance with the accounting standards set out in Appendix 3 to this chapter.
- 5.3 The **TMO** shall provide the Council with the following financial information:
- a) before the beginning of each **Financial Year**, a copy of the **TMO's** budget for the coming **Financial Year**;
 - b) within six weeks of the end of each quarter, a copy of the **TMO's** quarterly revenue report; and
 - c) within 6 months of the end of each **Financial Year**, a copy of the **TMO's** accounts and balance sheet for the previous **Financial Year** audited by a qualified auditor; and
 - d) within 1 month of receipt, a copy of the **TMO's** auditor's management letter.
- 5.4 The **TMO** shall, at any reasonable time, make available its books and records of account which relate to the management of the **Property** to inspection by the Council's internal audit staff, the Council's external auditor, or the District Auditor.

6 Financial Year

- 6 The **TMO's** financial year (the "**Financial Year**") shall be from 1 April to 31 March the following year.

7 Restriction on Investments

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

8 Reserve Funds

- 8 *(Option A: no clause needed because Council meets costs authorised by TMO). [Link to clause 2, option A and clause 3, option A].*
- 8.1 Clause not included.

8 Reserve Funds

8 *(Option B: where TMO has bank account(s) to meet management and/or maintenance costs.)*

8.1 *(Optional clause: omit unless TMO has responsibility for Major Works). [Link to chapter 2, clause 6, option C].*

8.1 Where the **TMO** has delegated responsibility for **Major Works** and the **ALLOWANCES** include provision which is to be accumulated by the **TMO** to meet the costs of **Major Works** as and when they fall due (see chapter 2, clause 6), the **TMO** shall set up a **Major Works Fund** (the "**Major Works Fund**") which shall:

- a) be shown on the **TMO's** balance sheet at the end of each **Financial Year**; and
- b) indicate, as a charge in each year's accounts, the amount set aside to meet the expected cost of fulfilling the **Major Works** responsibilities delegated to the **TMO**.

8.2 The **TMO** shall set up a **Reserve Fund** (the "**Reserve Fund**"), to be shown as such on the **TMO's** balance sheet at the end of each financial year, which shall comprise a reasonable and prudent provision and shall be certified as such by the **TMO's** auditor, to meet the following potential liabilities:

- a) anticipated costs in future years resulting from underspending on repairs and services;
- b) known commitments for future work in addition to the **Major Works Fund** (if any); and
- c) a contingency against costs arising from unforeseen circumstances.

8.3 The **Reserve Fund** shall be used to meet costs in fulfilling the **TMO's** responsibilities under this Agreement which cannot be met from **ALLOWANCES** for the current **Financial Year**.

8.4 If this Agreement ends the **TMO** shall within 3 months of the end of this Agreement produce an account and balance sheet as at the date on which this Agreement ends.

8.5 If a credit balance remains in the **Major Works Fund** (if any) or the **Reserve Fund** when this Agreement ends the balance shall be paid over to the Council.

9 Finance Report and Surplus Fund

9 *(Option A: where management and maintenance costs paid by Council, Council hold surplus fund). [Link to clause 3, option A].*

9.1 The Council shall keep an accurate account of the money paid out with the authority of the **TMO** (see clause 3 above).

9.2 The Council shall produce a written statement of account (the "**Financial Report**") which shows:

- a) a comparison of the costs authorised by the **TMO** and the **ALLOWANCES** (see clauses 1 and 2 above);
- b) provision for any other liabilities incurred by the **TMO**;
- c) the **Surplus Fund** provided for in this clause.

9.3 The Council shall produce a **Financial Report** for each **Financial Year**. The **Financial Report** for each year shall be produced and a copy sent to the **TMO** within six months of the end of the **Financial Year**. If the **Financial Report** shows a surplus the surplus shall be held by the Council (the "**Surplus Fund**") for the benefit of the **TMO**.

9.4 The **Surplus Fund** may be used by the **TMO** for any purposes permitted by the **TMO**'s constitution.

9.5 Any **Surplus Fund** balance shall be carried forward from one year to the next.

9.6 If this Agreement ends the Council shall produce a **Financial Report** up to the date on which this Agreement ended and, not later than 3 months of the ending of this Agreement, send a copy to the **TMO**.

9.7 If a **Surplus Fund** balance remains when this Agreement ends the **Surplus Fund** shall be used as the **TMO** directs. If the **TMO** fails to inform the Council within 12 months of the end of this Agreement how it wishes the **Surplus Fund** to be spent, the Council's obligations in respect of the **Surplus Fund** shall end.

9 Annual Accounts and Surplus Fund

9 *(Option B: where costs are paid by the TMO). [Link to clause 3, option B].*

9.1 Within 6 months of the end of each **Financial Year** the **TMO** shall produce an account and balance sheet for the past **Financial Year** (the "**Annual Accounts**") which show:

- a) a comparison of the costs authorised by the **TMO** and the **ALLOWANCES**;
- b) provision for any other liabilities incurred by the **TMO**;
- c) the **Major Works Fund** (if any);
- d) the **Reserve Fund** (if any); and
- e) the **Surplus Fund** provided for in this clause.

9.2 If the **Annual Accounts** show a surplus the surplus shall be transferred to a **Surplus Fund** (the "**Surplus Fund**"). The **Surplus Fund** shall be shown on the **TMO's** balance sheet.

9.3 Any balance in the **Surplus Fund** shall be carried forward from one year to the next.

9.4 If this Agreement ends the **TMO** shall within 3 months of the end of this Agreement produce an audited account and balance sheet as at the date on which this Agreement ends. The **TMO** shall send a copy of this account and balance sheet to the Council.

9.5 If a surplus remains in the **Surplus Fund** when this Agreement ends the surplus shall be retained by the **TMO**.

9.6 The **Surplus Fund** may be used by the **TMO** for any purposes permitted by the **TMO's** constitution.

10 Loans to the TMO

10.1 The Council may (if it has legal power to do so and subject to obtaining any necessary consents) grant to the **TMO** a loan or an overdraft guarantee to assist the **TMO** to overcome any short term cash flow difficulties.

10.2 The decision whether or not to grant a loan or an overdraft guarantee shall be at the sole discretion of the Council. In exercising its discretion the Council shall give reasonable consideration to any request from the **TMO**.

10.3 The Council shall also give reasonable consideration to a request from the **TMO** to increase the **ALLOWANCES** (see clause 1 above) if the **TMO** can show that:

- a) unforeseen costs have arisen; and
- b) the unforeseen costs are beyond the **TMO's** control.

10.4 If the Council refuses a request from the **TMO** for assistance under this clause the Council shall give the **TMO** written reasons for refusing the **TMO's** request.

11 Registration for VAT

- 11.1 The **TMO** shall apply for registration with HM Customs and Excise for Value Added Tax.

12 Interest on Late Payments

- 12 *(Option A: no clause needed because the Council retains the **ALLOWANCES** and the **TMO** does not collect rent). [Link to chapter 3, clause 2, options A and B and clause 3, option A above].*

- 12 Clause not included.

12 Interest on Late Payments

- 12 *(Option B: **TMO** and Council have obligations to pay interest on late payments).*

- 12.1 If any payment due from the **TMO** to the Council under this Agreement is late the **TMO** shall pay interest to the Council on the late payment. Interest shall be paid at 3% above the base lending rate of the **NOMINATED BANK** from the date on which the payment was due to the date on which payment is received by the Council.

- 12.2 If any payment due from the Council to the **TMO** under this agreement is late the Council shall pay interest to the **TMO** on the net amount of the late payment (that is the amount of the late payment less any rent or services charges collected and held by the **TMO** at the date the payment from the Council fell due). Interest shall be paid at 3% above the base lending rate of the **NOMINATED BANK** from the date on which the payment was due to the date on which the payment is received by the **TMO**.

13 Set Off

- 13 *(Option A: no clause needed because the Council retains the **ALLOWANCES** and the **TMO** does not collect rent.) [Link to chapter 3, clause 2, options A and B and clause 3, option A above].*

- 13 Clause not included.

13 Set Off

- 13 *(Option B: the Council or the **TMO** can deduct money owed from payments made.)*

- 13.1 If any payment due from the **TMO** to the Council under this Agreement is late or withheld by more than one month the Council may deduct the outstanding amount (together with interest due under clause 12 above) from any money payable to the **TMO**.
- 13.2 If any payment due from the Council to the **TMO** under this Agreement is late or withheld by more than one month the **TMO** may deduct the outstanding amount (together with interest due under clause 12 above) from any money payable to the Council.
- 13.3 If the right of set off in this clause is used interest shall cease to accrue under clause 12 on the date this right of set off is applied to any payment due.

CHAPTER 4

APPENDIX 1

Calculation of ALLOWANCES

CHECKLIST

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.

1 Use of approved methodology



Confirm that the sums required under this agreement to be calculated in accordance with this Appendix are to be calculated in accordance with *Calculating Allowances for Tenant Management Organisations (HMSO 1994)*.

For example:

- *all **ALLOWANCES** paid to the TMO for the responsibilities delegated to it are calculated according to the approved methodology if chapter 4 clause 1 option A is chosen*
- *the sum deducted from the rent from the **Property** under chapter 3 clause 6.2b) of option B only is calculated in accordance with the approved methodology if chapter 4 clause 1 option B is chosen*

2 Data



Specify objective data used to apportion local authority expenditure in order to calculate the **ALLOWANCES (if chapter 4 clause 1 option A is chosen) or Specify objective data used to apportion local authority expenditure in order to calculate the sum deducted from the rent (if chapter 3 clause 6 option B and therefore chapter 4 clause 1 option B is chosen)**

For example:

- *number of tenants, leaseholders and freeholders within larger management accounting units of which the TMO forms a part*
- *number of tenants, leaseholders and freeholders, weighted by number of bedrooms in their dwelling units within the larger management accounting units of which the TMO forms a part*
- *number of tenants, leaseholders and freeholders, weighted by number of bedrooms within the **Property** to be managed by the TMO*



Specify alternative apportionment bases to be used for particular services where evidence is available

For example:

- *grounds maintenance: area of grounds in TMO estates as a proportion of total in larger management accounting units*
- *contract cleaning: unit prices from contract documentation*
- *repairs and maintenance: analysis of costs by age/structure of stock*


3 Services

 **Identify services not provided to all groups of residents on the same basis**

For example:

- *rent accounting not applicable to leaseholders and freeholders*
- *service charge accounting not applicable to tenants*
- *internal repairs not applicable to leaseholders*

4 Calculated **ALLOWANCES** or Calculated Deductions

 **Summarise the principal elements of the annual **ALLOWANCES** for the first financial year (if chapter 4 clause 1 option A is chosen)/Summarise the principal elements of the annual deductions for the first financial year (if chapter 4 clause 1 option B is chosen)**

For example:


- *general management*
- *special services*
- *day-to-day repairs*
- *allowance for major works*
- *committee and communication allowance*

5 Annual variation of **ALLOWANCES** or calculated deductions

 **Identify variation in Allowances or calculated deductions to be made in respect of each sale on long lease of freehold**

For example:

- *general management: different accounting costs*
- *special services where not provided equally to all residents*
- *repairs and maintenance: internal repairs not provided to leaseholders or freeholders*

 **State index of prices or the alternative basis to be used in preference to HRA subsidy average increase if this has been agreed for specific elements of the **ALLOWANCES** or calculated deductions**

For example:

- *general management: pay award percentage for local authority staff*
- *special services: contract variation arrangement in local authority contracts if appropriate*

- *repairs and maintenance: building cost index*

6 Services supplied by the local authority



Identify services carried out by the local authority on behalf of the TMO for which cost calculated in accordance with the approved methodology equals the charge made by the local authority

For example:

- *rent accounting on the council's computer*
- *services carried out by council appointed contractors*

7 Comparable properties



Identify properties to be used as 'comparable' in reassessing the ALLOWANCES or calculated deductions

For example:

- *link to chapter 3 Appendix 3*

APPENDIX 2

Financial Procedures

CHECKLIST

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.

1. General.

 **Specify the principles of financial control by the TMO**

For example:

- *maintaining internal check*
- *controlling TMO resources*
- *ensuring that resources are available and used for agreed purposes*
- *maintaining high standards of probity and security*

 **Indicate the method by which procedures including financial limits may be changed**

2. Banking arrangements.

 **Identify bank accounts to be held by the TMO**

For example:

- *details of bank, branch and account number for each account*
- *purpose of account(s)*
- *the number of and designation of cheque signatories*
- *any financial limits relating to cheque signatories*

 **Set out procedures for managing bank accounts**

For example:

- *periodic tendering for banking services*
- *agreement of bank charges*
- *arrangements for transfers between accounts to maximise interest benefits and minimise charges*
- *prompt banking of receipts*
- *frequency of reconciliation*
- *procedure on change of signatories*

3. Borrowing and Investment

 **Set out procedures for any borrowing undertaken by the TMO**

For example:

- *authorization procedure by TMO committee*
- *external advice on capacity to meet repayments*
- *limits on borrowing powers which do not contravene TMO constitution*
- *any particular arrangements for monitoring the use and repayments of borrowed funds*



Set out procedures for investing surplus monies

For example:

- *the process for identifying cash available for investment*
- *assessment of investment term*
- *ensuring that investments do not breach the terms of the management agreement*
- *ensuring adequate access to sums invested*

4. Budgetary control



Set out procedures for setting and maintaining control of revenue budget

For example:

- *when is the budget set and by whom*
- *what setting and control responsibility remains with the TMO in general meeting and what is delegated to committees and staff*
- *identification of budget holders*
- *instructions as to profiling the budget*
- *action to be taken over variances*
- *what flexibility for virement between budget heads is permitted*
- *how action to be taken on over or underspends is decided and by whom*



Set out arrangements for reporting on income and expenditure and performance against budget

For example:

- *what reports are required to general and committee meetings and the Council*
- *what other reports should be prepared and who by*
- *how frequently reports will be presented*

5. Capital Expenditure



Set out procedures for bidding for capital resources

For example:

- *when bids will be required by the local authority*
- *what supporting information is required*
- *how bids are prepared and by whom*

- *what consultation arrangements with all affected residents is required*
- *reporting and approval arrangements within the TMO*



Set out procedures to be followed in controlling major works schemes

For example:

- *competitive tendering arrangements including EC advertisements or link to specific tendering procedures*
- *tender appraisal, selection and acceptance arrangements*
- *how any contract variations are agreed*
- *what action is required if variations or projected total scheme costs increase*
- *monitoring of budgets and progress and reporting arrangements*

6. Members Expenses



Set out agreed entitlement and procedures for reimbursing members' costs

For example:

- *for what meetings and activities expenses can be claimed*
- *what items are eligible expenses such as travel, subsistence, baby sitting, and at what rates*
- *any ineligible expenses such as loss of earnings*
- *ensuring the TMO remains within its constitution*
- *who will be eligible for such reimbursement*
- *how such payments are to be authorised*
- *any circumstances under which advances may be made*
- *any circumstances where prior committee approval is required*
- *time limit on claims*

7. Orders and Payments



Set out who is authorised to commit expenditure

For example:

- *who may place orders and any cash limits*
- *any cash limits above which quotations will be required*
- *at what level of expenditure are competitive tenders required including those required by legislation or the management agreement*
- *any additional requirements such as consultation on works for which service charges are payable*
- *any cash limits above which work must be tendered*



Set out how payments will be authorised and by whom

For example:

- *what arrangements are made for certifying receipt of goods or services to an acceptable standard including supporting documentation required*
- *who may authorise payment (which should be someone other than the person who placed the order or who will receive the payment)*
- *details of any limits on who is able to authorise particular types of payments and/or payments over specified sums*
- *additional authorization procedures for cash payments or direct bank transfers*
- *how regularly will payments be authorised and where from*
- *procedures which prevent blank or partially completed cheques being signed*
- *procedures preventing cashing of personal cheques*

8. Payroll



Specify arrangements for payment of staff

For example:

- *payment cycle such as weekly or monthly date*
- *certification of timesheets and overtime claims*
- *verification of payroll before payment*
- *proper deduction of tax/NI following Inland Revenue and DSS instructions*
- *no payments of salaries/wages except through payroll system*
- *maintenance of payroll records including tax/NI returns, statutory sick pay and maternity leave*

9. Petty Cash



Set out procedures for authorising and managing petty cash

For example:

- *size of petty cash floats to be held and by whom*
- *procedures for reviewing float size*
- *procedures for authorising claims such as:*
 - *presenting receipts/completing petty cash slips*
 - *payments signed for by the person receiving them*
- *procedures for reimbursing the float*

10. Rent Accounting and Other Income



Set out procedures for rent and service charge accounting and other income

For example:

- *link to rent collection, arrears prevention and control procedures*
- *frequency rent due such as weekly/fortnightly*
- *billing arrangements for service charges and other income*

- *any billing arrangements for the **ALLOWANCES** as appropriate*
- *arrangements for handling non cash credits such as Housing Benefit*
- *frequency of posting credits*
- *arrangements for reporting amounts due and collected*
- *confidentiality arrangements*
- *control and balancing of accounts*
- *authorization arrangements for writing off debt*

11. Security of Cash



Set out arrangements for safeguarding cash

For example:

- *cash to be held in safe*
- *use of secure vehicles for cash in transit*
- *frequency of banking to minimise cash held*

APPENDIX 3

Accounts and Audit

CHECKLIST

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.

1 Accounting policies and standards



State underlying accounting principles and standards

For example:

- *compliance with relevant professional standards and best professional practice*
- *compliance with requirements of Companies Acts/Industrial and Provident Society Acts as appropriate*
- *Accruals basis/Cash basis for accounts*
- *Asset valuation basis: historic/current cost*

2 Accounting Analysis



Identify level of analysis to be maintained

For example:

- *to facilitate management accounting and final accounts preparation*
- *to facilitate information to and recharges of expenditure to leaseholders*
- *intended cost centres*

3 Annual Accounts



Specify key elements of preparation and presentation of Annual Accounts

For example:

- *procedure and timetable for drawing up draft accounts*
- *income and expenditure headings match those of the budget*
- *accounting format and subsidiary statements*
- *timescales for preparation which meet management agreement requirements*

4 Audit



Set out audit arrangements

For example:

- *selection and appointment of auditors and procedure for changing auditors in accordance with the constitution of the TMO*
- *state where details of the current auditor's name, address can be found and the date their appointment was approved by the TMO*
- *who is responsible for communication with the auditor and ensuring that the accounts are presented for audit each year in time to meet statutory deadlines*
- *details of who audited accounts will be lodged with such as all members in accordance with the constitution, the Council, any other funding bodies*
- *details of who auditor's management letters and any responses from the TMO will be lodged with*
- *storage and retention of all documents relating to the audit*

4 Information to be provided



Set out the timetable for information to be provided by the Local Authority and the TMO to allow each to carry out their respective responsibilities

For example:

- *rechargeable costs of services to leaseholders*
- *TMO provisions for held on reserve and for future planned expenditure*
- *information required to assess the financial performance of the TMO*
- *data required for HRA subsidy claims*

CHAPTER 5

TENANCY MANAGEMENT

1 Provision of Information to Housing Applicants

- 1.1 The Council shall provide applicants on its housing waiting list with:
- a) general information about tenant management organisations in its borough or district; and
 - b) information supplied by the **TMO** about the **TMO** and the Priority Allocations Scheme (if any) which forms Appendix 2 to this chapter (the "**Priority Allocations Scheme**").
- 1.2 The **TMO** shall provide the Council with an information leaflet about the **TMO** and the **Priority Allocations Scheme** (if any).
- 1.3 The Council shall give housing applicants the opportunity of indicating their interest in being housed in the **Property**.
- 1.4 *(Optional sub-clause).*
- 1.4 *(Option A: no introductory meetings).*
- 1.4 Clause omitted.
- 1.4 *(Option B: introductory meetings arranged by the **TMO**, but Council invited to attend).*
- 1.4.1 The Council shall inform housing applicants who express an interest in being housed in the **Property** about the introductory meetings arranged to inform them about the **TMO**.
- 1.4.2 The **TMO** shall organise introductory meetings to inform prospective tenants about the **TMO**. To enable the **TMO** to organise introductory meetings the Council shall, not less than once every three months, provide the **TMO** with a list of the names and addresses of housing applicants who have expressed an interest in being housed in the **Property**. The **TMO** shall notify the Council, in writing, of the date, time and venue for any meeting arranged under the provisions of this clause and invite the Council to send a representative to the meeting. The Council may send a representative to attend and, if the representative wishes, to speak at such a meeting to explain the Council's policy in respect of tenant management organisations in general and the **TMO** in particular.

1.4.3 The fact that a prospective tenant has not attended an introductory meeting shall not prevent the Council from nominating that prospective tenant for housing in the **Property**.

1.4 *(Option C: Introductory meetings for applicants arranged jointly by the Council and the TMO. This option can only be included if both the TMO and the Council agree and the Approved Person (as referred to in the Regulations) cannot recommend that it be included in the proposed agreement without the agreement of the TMO and the Council).*

1.4.1 The Council shall inform housing applicants who express an interest in being housed in the **Property** about the introductory meetings arranged to inform them about the **TMO**.

1.4.2 The Council and the **TMO** shall jointly organise introductory meetings to inform prospective tenants about the **TMO**. By agreement between the Council and the **TMO** the introductory meetings shall either:

- a) be arranged specifically for the applicants the Council intends to nominate for housing in the **Property**; or
- b) be a series of meetings for applicants who have expressed an interest in being housed in the **Property**.

1.4.3 The fact that a prospective tenant has not attended an introductory meeting shall not prevent the Council from nominating that prospective tenant for housing in the **Property**.

1.4 *(Option D: introductory meetings arranged by the TMO).*

1.4.1 The Council shall inform housing applicants who express an interest in being housed in the **Property** about the introductory meetings arranged to inform them about the **TMO**.

1.4.2 The **TMO** shall organise introductory meetings to inform prospective tenants about the **TMO**. To enable the **TMO** to organise introductory meetings the Council shall, not less than once every three months, provide the **TMO** with a list of the names and addresses of housing applicants who have expressed an interest in being housed in the **Property**.

1.4.3 The fact that a prospective tenant has not attended an introductory meeting shall not prevent the Council from nominating that prospective tenant for housing in the **Property**.

2 Nomination of Applicants and Selection of Tenants

2 (Option A: clause omitted, Council retains total responsibility for selection of tenants for vacant dwellings in the **Property**). [Link to clause 3, option A].

2.1 Clause not included.

2 Nomination of Applicants and Selection of Tenants

2 (Option B: **TMO** considers only applicants nominated by the Council).

2.1 The Council shall nominate all persons to be granted tenancies for dwellings in the **Property** which become available for letting. Tenancies of vacant dwellings in the **Property** shall not be granted to persons other than those nominated by the Council. The policy, procedures and timescales for nominations is set out in Appendix 1 to this chapter (the "**Nominations Procedure**").

2.2 The Council shall nominate housing applicants in accordance with the **Nominations Procedure**. The Council shall, so far as the **Priority Allocations Scheme** permits, nominate applicants who have expressed an interest in being housed in the **Property**.

2.3 In determining which of the applicants nominated by the Council will be offered tenancies the **TMO** shall at all times:

- a) comply with the **Priority Allocations Scheme**; and
- b) ensure that the **TMO's** equal opportunities policy and practice is put into effect (see chapter 1, clause 9).

2.4 The **TMO** also acknowledges that, in selecting applicants who shall be granted tenancies, the **TMO** is bound by all legal provisions which bind the Council in carrying out this function, including Section 22 of the Housing Act 1985 which imposes a duty to give a reasonable preference to:

- a) persons occupying insanitary or overcrowded homes;
- b) persons having large families;
- c) persons living under unsatisfactory housing conditions; and
- d) persons towards whom the Council has a duty because they are homeless;

and the **TMO** shall not take into account in selecting tenants whether or not applicants are in receipt of housing benefit.

2.5 In the event of the Council failing to nominate housing applicants within the timescale set out in Appendix 1 to this chapter the **TMO** may submit to the Council

for nomination a list of persons who have informed the **TMO** of their interest in being housed in the **Property**.

2.6 The Council may at any time require the **TMO** to offer a specified vacant dwelling to a person whom the Council in its absolute discretion determines it has a statutory duty to house under Sections 65(2) and 68(2) of the Housing Act 1985 or under any other statutory duties to rehouse, including Section 39 and 40 of the Land Compensation Act 1973 or Section 27 of the Children Act 1989.

2.7 To exercise the right in clause 2.6 above the Council shall serve on the **TMO** a notice (the "**Statutory Duty Nomination**") setting out:

- a) the name of the proposed tenant;
- b) the name(s) of any family members who will live with the tenant;
- c) the address of the vacant dwelling to which the nomination is made; and
- d) a statement as to which of the Council's statutory duties applies.

2.8 *(Option 1: use if clause 3 option B is used).*

2.8 The **TMO** shall accept any **Statutory Duty Nomination** and as soon as may be practicable serve a **Tenancy Notice** on the Council (see clause 3) provided that:

- a) the household nominated in the **Statutory Duty Nomination** satisfies the household size criteria set out in the **Priority Allocations Scheme** for letting the vacant dwelling specified in the **Statutory Duty Nomination**; and
- b) during the preceding twelve calendar months, the **TMO** has not accepted a number of **Statutory Duty Nominations** which represent a higher proportion of the total number of households which the Council has such a statutory duty to house than the proportion the number of dwellings covered by this Agreement bears to the total number of dwellings in the Council's own housing stock (including stock available to the Council through nomination rights to housing managed by tenant management organisations and nomination rights to other housing stock).

2.8 *(Option 2: use if clause 3, option C is used).*

2.8 The **TMO** shall accept any **Statutory Duty Nominations** and as soon as may be practicable grant a tenancy to the proposed tenants named in the **Statutory Duty Nomination** provided that:

- a) the household nominated in the **Statutory Duty Nomination** satisfies the household size criteria set out in the **Priority Allocations Scheme** for letting the vacant dwelling specified in the **Statutory Duty Nomination**; and

- b) before receipt of the **Statutory Duty Nomination** the **TMO** has not already granted a tenancy of the vacant dwelling to another tenant selected in accordance with the **Priority Allocations Scheme**; and
- c) during the preceding twelve calendar months, the **TMO** has not accepted a number of **Statutory Duty Nominations** which represent a higher proportion of the total number of households which the Council has such a statutory duty to house than the proportion the number of dwellings covered by this Agreement bears to the total number of dwellings in the Council's own housing stock (including stock available to the Council through nomination rights to housing managed by tenant management organisations and nomination rights to other housing stock).

2.9 If the **TMO** considers that it has accepted more **Statutory Duty Nominations** than the number referred to in clause 2.8 above, the **TMO** may request the Council to demonstrate that the **TMO** has not accepted more than that number. The request shall be in writing and shall state why the **TMO** considers that it has grounds for not accepting the **Statutory Duty Nomination**.

2.10 Within 7 days of the receipt of a request made under clause 2.9 above the Council shall provide such information as may reasonably be necessary to demonstrate either:

- a) that the **TMO** has not accepted more than the number of **Statutory Duty Nominations** referred to in clause 2.8 above; or
- b) that there is no other suitable vacant dwelling available to the Council to which the **Statutory Duty Nomination** may be made.

2.11 Within 7 days of receiving information from the Council under clause 2.10 above the **TMO** shall either:

- a) if it is satisfied with the information provided, let the vacant dwelling to the tenant proposed in the **Statutory Duty Nomination**; or
- b) if it is not satisfied with the information provided, refer the matter to dispute (see chapter 6, clause 16).

2.12 If under clause 2.11 b) above a **Statutory Duty Nomination** is referred to dispute under clause 16 of chapter 6 the vacant dwelling shall be held vacant until the dispute is resolved. If the dispute is resolved in favour of the Council, the **TMO** shall bear the loss of rent on the vacant dwelling from the date the matter is referred to dispute until the dispute is resolved and re-letting occurs. If the dispute is resolved in favour of the **TMO** the Council shall bear the loss of rent on the vacant dwelling from the date the matter is referred to dispute until the dispute is resolved and re-letting occurs.

2 Nomination of Applicants and Selection of Tenants

2 *(Option C: TMO considers housing applicants in accordance with the **Priority Allocations Scheme**).*

2.1 The **TMO** shall, in accordance with the provisions of this clause, determine which persons from the Council's Housing Waiting List shall be granted tenancies to vacant dwellings in the **Property**.

2.2 The **TMO** shall select housing applicants to be granted tenancies to vacant dwellings in the **Property** in accordance with the **Priority Allocations Scheme**. The **TMO** shall, so far as the **Priority Allocations Scheme** permits, select housing applicants who have expressed an interest in being housed in the **Property**.

2.3 In determining which housing applicants will be offered tenancies the **TMO** shall at all times:

- a) comply with the **Priority Allocations Scheme**; and
- b) ensure that the **TMO's** equal opportunities policy and practice is put into effect (see chapter 1, clause 9).

2.4 The **TMO** also acknowledges that, in selecting applicants who shall be granted tenancies, the **TMO** is bound by all legal provisions which bind the Council in carrying out this function, including Section 22 of the Housing Act 1985 which imposes a duty to give a reasonable preference to:

- a) persons occupying insanitary or overcrowded homes;
- b) persons having large families;
- c) persons living under unsatisfactory housing conditions; and
- d) persons towards whom the Council has a duty because they are homeless;

and the **TMO** shall not take into account in selecting tenants whether or not applicants are in receipt of housing benefit.

2.5 The Council may at any time require the **TMO** to offer a specified vacant dwelling to a person whom the Council in its absolute discretion determines it has a statutory duty to house under Sections 65(2) and 68(2) of the Housing Act 1985 or under any other statutory duties to rehouse, including Section 39 and 40 of the Land Compensation Act 1973 or Section 27 of the Children Act 1989.

2.6 To exercise the right in clause 2.5 above the Council shall serve on the **TMO** a notice (the "**Statutory Duty Nomination**") setting out:

- i) the name of the proposed tenant;
- ii) the name(s) of any family members who will live with the tenant;
- iii) the address of the vacant dwelling to which the nomination is made; and
- iv) a statement as to which of the Council's statutory duties applies.

2.7 *(Option 1: use if clause 3, option B is used).*

2.7 The **TMO** shall accept any **Statutory Duty Nomination** and as soon as may be practicable serve a **Tenancy Notice** on the Council (see clause 3) provided that:

- a) the household nominated in the **Statutory Duty Nomination** satisfies the household size criteria set out in the **Priority Allocations Scheme** for letting the vacant dwelling specified in the **Statutory Duty Nomination**; and
- b) during the preceding twelve calendar months, the **TMO** has not accepted a number of **Statutory Duty Nominations** which represent a higher proportion of the total number of households which the Council has such a statutory duty to house than the proportion the number of dwellings covered by this Agreement bears to the total number of dwellings in the Council's own housing stock (including stock available to the Council through nomination rights to housing managed by tenant management organisations and nomination rights to other housing stock).

2.7 *(Option 2: use if clause 3, option C is used).*

2.7 The **TMO** shall accept any **Statutory Duty Nominations** and as soon as may be practicable grant a tenancy to the proposed tenant named in the **Statutory Duty Nomination** provided that:

- a) the household nominated in the **Statutory Duty Nomination** satisfies the household size criteria set out in the **Priority Allocations Scheme** for letting the vacant dwelling specified in the **Statutory Duty Nomination**; and
- b) before receipt of the **Statutory Duty Nomination** the **TMO** has not already granted a tenancy of the vacant dwelling to another tenant in accordance with the **Priority Allocations Scheme**; and
- c) during the preceding twelve calendar months, the **TMO** has not accepted a number of **Statutory Duty Nominations** which represent a higher proportion of the total number of households which the Council has such a statutory duty

to house than the proportion the number of dwellings covered by this Agreement bears to the total number of dwellings in the Council's own housing stock (including stock available to the Council through nomination rights to housing managed by tenant management organisations and nomination rights to other housing stock).

- 2.8 If, the **TMO** considers that it has accepted more **Statutory Duty Nominations** than the number referred to in clause 2.7 above, the **TMO** may request the Council to demonstrate that the **TMO** has not accepted more than that number. The request shall be in writing and shall state why the **TMO** considers that it has grounds for not accepting the **Statutory Duty Nomination**.
- 2.9 Within 7 days of the receipt of a request made under clause 2.8 above the Council shall provide such information as may reasonably be necessary to demonstrate either:
- a) that the **TMO** has not accepted more than the number of **Statutory Duty Nominations** referred to in clause 2.7 above; or
 - b) that there is no other suitable vacant dwelling available to the Council to which the **Statutory Duty Nomination** may be made.
- 2.10 Within 7 days of receiving information from the Council under clause 2.9 above the **TMO** shall either:
- a) if it is satisfied with the information provided, let the vacant dwelling to the tenants proposed in the **Statutory Duty Nomination**; or
 - b) if it is not satisfied with the information provided, refer the matter to dispute (see chapter 6, clause 16).
- 2.11 If under clause 2.10 b) above a **Statutory Duty Nomination** is referred to dispute under clause 16 of chapter 6 the vacant dwelling shall be held vacant until the dispute is resolved. If the dispute is resolved in favour of the Council, the **TMO** shall bear the loss of rent on the vacant dwelling from the date the matter is referred to dispute until the dispute is resolved and re-letting occurs. If the dispute is resolved in favour of the **TMO** the Council shall bear the loss of rent on the vacant dwelling from the date the matter is referred to dispute until the dispute is resolved and re-letting occurs.

3 Granting Tenancies

3 *(Option A: the Council grants tenancies). [Link, cannot be used with clause 2, options B and C].*

3 The Council shall retain responsibility for granting tenancies to persons selected as tenants for vacant dwellings in the **Property**.

3 Granting Tenancies

3 *(Option B: Council grants tenancies at the TMO's request).*

3.1 When, in accordance with the provisions of clause 2 above, the **TMO** selects a housing applicant to become the tenant of a dwelling in the **Property** which is or shall become vacant, the **TMO** shall serve written notice on the Council (the "**Tenancy Notice**") requesting the Council to grant a tenancy to the chosen applicant.

3.2 The Council shall grant a tenancy to the chosen applicant within 7 days of receiving the **Tenancy Notice** unless the Council has information from which it may reasonably conclude that the **TMO** has failed to comply with the **Priority Allocations Scheme** or any of the other provisions of clause 2 or the Council wishes to make a **Statutory Duty Nomination**.

3.3 The tenancy granted by the Council shall be in the form of agreement (the "**Tenancy Agreement**") set out in Annex A to this chapter.

3.4 If the Council decides that it has reasons for not granting the tenancy the Council shall, within 7 days of receipt of the **Tenancy Notice**, notify the **TMO** in writing (the "**Tenancy Refusal Notice**") of the reasons for not granting the tenancy and, if making a **Statutory Duty Nomination**, make the **Statutory Duty Nomination**.

3.5 If the **TMO** receives a **Tenancy Refusal Notice** the **TMO** shall, within 7 days, either:

- a) consider the **Statutory Duty Nomination** and serve a **Tenancy Notice** in respect of it; or
- b) if the **Tenancy Refusal Notice** is not accompanied by a **Statutory Duty Nomination**, select another applicant in accordance with the **Priority Allocations Scheme** and serve a further **Tenancy Notice** on the Council; or
- c) refer the matter to dispute (see chapter 6, clause 16).

3 Granting Tenancies

3 *(Option C: TMO grants tenancy).*

3.1 The **TMO** is authorised, as agent for the Council, to grant tenancies of dwellings in the **Property** which become vacant. The **TMO** shall grant tenancies only to applicants selected in accordance with clause 2 above.

3.2 Before offering a tenancy to an applicant selected in accordance with clause 2 the **TMO** shall give to the Council not less than two working days notice of its

intention to grant the tenancy in order that the Council may determine whether or not to make a **Statutory Duty Nomination**.

- 3.3 The tenancy granted by the **TMO** shall be in the form of agreement (the "**Tenancy Agreement**") set out in Annex A to this chapter.

4 Variations to the Terms of Tenancy

4 *(Option A: terms of tenancy varied only by the Council).*

- 4.1 The terms of the **Tenancy Agreement** may only be varied by the Council.
- 4.2 If the Council proposes to vary the terms of the **Tenancy Agreement** (other than variations to **Rent**, see chapter 3, clause 6) the Council shall give the **TMO** written notice (the "**Tenancy Variation Notice**") detailing the variations proposed.
- 4.3 To enable the **TMO** to consult its members on variations proposed by the Council the **Tenancy Variation Notice** shall be served on the **TMO** not less than 56 days in advance of the date on which the Council intends to serve on secure tenants a preliminary notice of variation required by Section 103(2) of the Housing Act 1985.
- 4.4 The **TMO** may, within 28 days of receipt of the **Tenancy Variation Notice**, submit to the Council the **TMO's** written views on the variations proposed. If the **TMO** submits its views to the Council the Council shall, before serving the preliminary notice of variation of tenancy on secure tenants under the provisions of Section 103 of the Housing Act 1985, give a reasoned written response to the views of the **TMO** on the proposed variation to the **Tenancy Agreement**.
- 4.5 If the **Tenancy Agreement** is varied under this clause the **Tenancy Agreement** in Annex A to this chapter shall be replaced with a copy of the **Tenancy Agreement** containing the variation. The date on which the change comes into effect shall be noted on the revised Annex A.

4 Variations to the Terms of Tenancy

4 *(Option B: Variations to the terms and conditions of tenancy may be initiated by the Council or the TMO).*

- 4.1 Variations (other than variations to **Rent**, see chapter 3, clause 6) to the terms of the **Tenancy Agreement** may be initiated by the Council or the **TMO** serving on the other a written notice (the "**Tenancy Variation Notice**") detailing the variations proposed.
- 4.2 A **Tenancy Variation Notice** shall be served not less than 56 days in advance of the date on which it is intended to serve on periodic secure tenants a preliminary notice of variation required by Section 103(2) of the Housing Act 1985.

- 4.3 If a **Tenancy Variation Notice** is served on the Council by the **TMO** the Council shall within 28 days of receipt of the notice:
- a) consent in writing to the variation proposed by the **TMO**; or
 - b) amend the **TMO's** proposed variation and, in writing, give reasons for and consent to the amended variation; or
 - c) inform the **TMO** in writing of the Council's rejection of the variation proposed and the reasons for the rejection.
- 4.4 If a **Tenancy Variation Notice** is served on the **TMO** by the Council, the **TMO** may within 28 days of receipt of the notice submit in writing to the Council its views on the variation proposed. If the **TMO** submits its views to the Council the Council shall, before the preliminary notice of variation of tenancy is served on periodic secure tenants under the provisions of Section 103(2) of the Housing Act 1985, give a reasoned written response to the views of the **TMO** on the proposed variation to the **Tenancy Agreement**.
- 4.5 If a variation is initiated by the Council, the Council shall consult secure tenants and administer the variation of the terms of secure tenancies by either:
- a) obtaining secure tenants' written agreement to the variation (see Section 102 (1) of the Housing Act 1985); or
 - b) by serving the preliminary notice of variation, considering comments made by secure tenants and serving the notice of variation (see Section 103 of the Housing Act 1985).
- 4.6 If a variation is initiated by the **TMO**,
- 4.6.1 the **TMO** shall consult secure tenants and administer the variation of the terms of secure tenancies by either:
- a) obtaining secure tenants' written agreement to the variation (see Section 102 (1) of the Housing Act 1985); or
 - b) by serving the preliminary notice of variation, considering comments made by secure tenants and serving the notice of variation (see Section 103 of the Housing Act 1985), and
- 4.6.2 before serving the notice of variation, the **TMO** shall:
- a) give reasoned consideration to comments made by secure tenants to the variation proposed in the preliminary notice of variation; and

- b) give to the Council a written report on the comments made by secure tenants to the variation proposed in the preliminary notice of variation and the **TMO's** reasoned response to the comments made.

4.6.3 If, having given reasoned consideration to the comments made by secure tenants to the variation proposed in the preliminary notice of variation, the **TMO** decides that the variation proposed needs to be amended, the **TMO** shall obtain the Council's written consent to the amended variation, which consent shall not be unreasonably withheld or delayed, before serving on secure tenants the notice of variation of the terms of their tenancy (see Section 103(4) of the Housing Act 1985).

4.7 If the **Tenancy Agreement** is varied under this clause, the **Tenancy Agreement** in Annex A to this chapter shall be replaced with a copy of the **Tenancy Agreement** containing the variation. The date on which the change comes into effect shall be noted on the revised Annex A.

4 Variations to the Terms of Tenancy

4 *(Option C: Variations initiated by the TMO). [Link to clause 3, option C].*

4.1 The terms of the **Tenancy Agreement** (other than terms relating to **Rent**, see chapter 3, clause 6) may only be varied by the **TMO**.

4.2 If the **TMO** proposes to vary the terms of the **Tenancy Agreement** the **TMO** shall give to the Council written notice (the "**Tenancy Variation Notice**") detailing the variations proposed.

4.3 If a **Tenancy Variation Notice** is served on the Council by the **TMO** the Council shall within 28 days of receipt of the notice:

- a) consent in writing to the variation proposed by the **TMO**; or
- b) inform the **TMO** in writing of the Council's rejection (in whole or in part) of the variations proposed and the reasons for the rejection.

4.4 If a variation is proposed and approved under this clause,

4.4.1 the **TMO** shall consult secure tenants and administer the variation of the terms of secure tenancies by either:

- a) obtaining secure tenants' written agreement to the variation (see Section 102 (1) of the Housing Act 1985); or
- b) by serving the preliminary notice of variation, considering comments made by secure tenants and serving the notice of variation (see Section 103 of the Housing Act 1985), and

4.4.2 before serving the notice of variation the **TMO** shall:

- a) give reasoned consideration to comments made by secure tenants to the variation proposed in the preliminary notice of variation; and
- b) give to the Council a written report on the comments made by secure tenants to the variation proposed in the preliminary notice of variation and the **TMO**'s reasoned response to the comments made.

4.4.3 If, having given reasoned consideration to the comments made by secure tenants to the variation proposed in the preliminary notice of variation, the **TMO** considers that the variation proposed needs to be amended, the **TMO** shall obtain the Council's written consent to the amended variation, which consent shall not be unreasonably withheld or delayed,

before serving on secure tenants the notice of variation of the terms of their tenancy (see Section 103 (4) of the Housing Act 1985).

- 4.5 If the **Tenancy Agreement** is varied under this clause the **Tenancy Agreement** in Annex A to this chapter shall be replaced with a copy of the **Tenancy Agreement** containing the variation. The date on which the change comes into effect shall be noted on the revised Annex A.

5 Management of Breaches of Tenancy

5 *(Option A: Council retains ultimate responsibility for ending tenancies. Council serves notices at the TMO's request. Council has discretion not to serve notices.)*

- 5.1 If the **TMO** considers that on a ground other than **Rent** or **Service Charge** arrears:
- a) a tenant in the **Property** is in breach of their tenancy; or
 - b) a leaseholder in the **Property** is in breach of the lease; or
 - c) a freeholder in the **Property** is in breach of a covenant in the freehold transfer;

the **TMO** may serve written notice on the Council (a "**Notice of Tenancy Breach**") which requests the Council:

- i) in the case of a tenant, to serve notice to quit or notice seeking possession; or
 - ii) in the case of a leaseholder, to serve notice of intention to commence forfeiture proceedings; or
 - iii) in the case of a freeholder, to serve notice of intention to enforce the covenant; or
 - iv) in any case, to take such other action as the **TMO** considers appropriate.
- 5.2 The **TMO** shall not serve on the Council a **Notice of Tenancy Breach** unless the **TMO** has, if reasonably practicable to do so, made attempts to secure the remedy of the alleged breach by persuasion.
- 5.3 The **Notice of Tenancy Breach** shall state:
- a) the name and address of the tenant, leaseholder or freeholder who is alleged to be in breach; and
 - b) the nature of the alleged breach; and

- c) the attempts the **TMO** has made to secure the remedy of the alleged breach by persuasion and, if the **TMO** has not attempted to secure the remedy of the alleged breach by persuasion, why it considers that this is not reasonably practicable.

5.4 On receiving a **Notice of Tenancy Breach** the Council shall, at its sole discretion, either:

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

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

5.6 If the Council refuses the **TMO**'s request, the Council shall within 7 days inform the **TMO** of its decision and the reasons for it.

5.7 If the Council refuses the **TMO**'s request, the Council shall indemnify the **TMO** against any reasonable extra costs the **TMO** may incur as a result of the alleged breach.

5.8 Where the **TMO** serves a **Notice of Tenancy Breach** the **TMO** shall provide the information and assistance necessary for the Council to fulfil its obligations under this clause.

5.9 The Council shall not, unless it has received a **Notice of Tenancy Breach** from the **TMO**, take any of the actions set out in this clause without consulting the **TMO** on the action proposed and the reasons for it.

5 Management of Breaches of Tenancy

5 *(Option B: The **TMO** grants tenancies and has ultimate responsibility for ending tenancies). [Link to clause 3, option C].*

5.1 The **TMO** shall, in exercising its duties under this Agreement, adopt good management practices as recommended by housing management practice guidance issued from time to time by the Chartered Institute of Housing in the United Kingdom to try to ensure that tenants and those lawfully resident in the **Property** are permitted quiet enjoyment of their homes.

5.2 If, however, the **TMO** considers that on a ground other than **Rent** or **Service Charge** arrears:

- a) a tenant in the **Property** is in breach of their tenancy; or

- b) a leaseholder in the **Property** is in breach of their lease; or
- c) a freeholder in the **Property** is in breach of a covenant in their freehold transfer;

the **TMO** is authorised in the name of the Council:

- i) in the case of a tenant to serve notice seeking possession or notice to quit; or
- ii) in the case of a leaseholder to serve notice of intention to commence forfeiture proceedings; or
- iii) in the case of a freeholder to serve notice of intention to enforce the covenant; or
- iv) in any case, to take such other legal proceedings as the **TMO** considers appropriate.

5.3 The **TMO** shall not take action under clause 5.2 above unless the **TMO** has, if it is reasonably practicable to do so, made attempts to secure the remedy of the alleged breach by persuasion.

5.4 The **TMO** shall within 7 days of taking any of the actions referred to in clause 5.2 above inform the Council in writing of:

- a) the name and address of the person on whom a notice has been served;
- b) the nature of the alleged breach and the reason for the action being taken; and
- c) the attempts the **TMO** has made to secure the remedy of the alleged breach by persuasion and, if the **TMO** has not attempted to secure the remedy of the alleged breach by persuasion, why it considers that this is not reasonably practicable.

5.5 The **TMO** is authorised to take Court proceedings, in the name of the Council, in respect of any matter referred to in clause 5.2 above and shall inform the Council in writing within 7 days of the date when any of the following events occur:

- a) the application by the **TMO** to the County Court for the service of a summons;
- b) the receipt by the **TMO** of a notice from the Court of the date of a hearing;
- c) the hearing of the case and the judgement of the Court;
- d) the withdrawal of a notice served or suspension or cancellation of any action taken under this clause.

- 5.6 The **TMO** shall not without the Council's prior written consent apply to the Court for the enforcement of possession by eviction or the enforcement of any judgement of the Court obtained under the powers granted to the **TMO** by this clause.
- 5.7 The Council may instruct the **TMO** in writing, for reasons given, to withdraw any notice or suspend or cancel any action taken under this clause.
- 5.8 If the Council refuses consent (see clause 5.6 above) or instructs the **TMO** to suspend or cancel action (see clause 5.7 above) the Council shall indemnify the **TMO** against any reasonable extra costs arising out of the alleged breach of tenancy.
- 5.9 If the Council considers that one of the events referred to in clause 5.2 a) to c) above has occurred, the Council may request the **TMO** to take action under the terms of this clause. The **TMO** shall not unreasonably withhold or delay consent to a request from the Council to take action under this clause.

6 Unlawful Occupation

- 6 *(Option A: the Council retains responsibility for ending unlawful occupation. TMO has responsibility to notify the Council).*
- 6.1 If the **TMO** considers that a dwelling in the **Property** is sub-let without consent or occupied by persons who have no legal right to live in the dwelling, the **TMO** shall inform the Council in writing that it has reason to believe that a dwelling is unlawfully occupied and the evidence which has led the **TMO** to reach this conclusion.
- 6.2 On receiving a report from the **TMO** that a dwelling is unlawfully occupied, the Council shall:
- i) carry out an investigation to determine whether or not the dwelling is unlawfully occupied; and
 - ii) within 21 days inform the **TMO** of the results of its investigation and the action, if any, the Council intends to take.
- 6.3 If, having carried out the investigation, the Council concludes that the dwelling is unlawfully occupied the Council shall take such legal action as may be necessary to end the unlawful occupation.

6 Unlawful Occupation

- 6 *(Option B: the responsibility for taking action to remedy unlawful occupation of dwellings is delegated to the TMO).*

6.1 If the Council considers that a dwelling in the **Property** is sub-let without consent or occupied by persons who have no legal right to live in the dwelling, the Council shall inform the **TMO** in writing that it has reason to believe that a dwelling is unlawfully occupied and the evidence which has led the Council to reach this conclusion.

6.2 If the **TMO**:

- a) has reason to believe that a dwelling in the **Property** is sub-let without consent or occupied unlawfully; or
- b) receives a report from the Council that the Council considers that a dwelling in the **Property** is occupied unlawfully;

the **TMO** shall:

- i) carry out an investigation to determine whether or not the dwelling is unlawfully occupied; and
- ii) within 21 days inform the Council of the results of its investigation and the action, if any, the **TMO** intends to take.

6.3 If, having carried out the investigation, the **TMO** concludes that the dwelling is unlawfully occupied the **TMO** shall take such legal action as may be necessary to end the unlawful occupation.

7 Management of Void Dwellings

7 *(Option A: the Council retains responsibility for the management of void dwellings).*

7.1 The Council shall retain responsibility for receiving notices from tenants wishing to end their tenancy and for the management of any rented dwelling in the **Property** which becomes and remains vacant for any reason.

7.2 If repairs are needed to any vacant dwelling to make the dwelling fit for re-letting or otherwise, the repairs shall be carried out either by the Council or the **TMO** in accordance with their respective repair responsibilities set out in chapter 2 of this Agreement.

7 Management of Void Dwellings

7 *(Option B: the TMO has delegated responsibility for the management of void dwellings).*

- 7.1 The **TMO** shall be responsible for receiving notices from tenants wishing to end their tenancy and for the management of any rented dwelling in the **Property** which becomes and remains vacant for any reason.
- 7.2 The **TMO** shall take such actions as may reasonably be necessary to secure a vacant dwelling against unlawful occupation and to protect it from damage and deterioration.
- 7.3 If repairs are needed to any vacant dwelling to make the dwelling fit for re-letting or otherwise, the repairs shall be carried out either by the Council or the **TMO** in accordance with their respective repair responsibilities set out in chapter 2 of this Agreement.

8 Administration of the Right to Exchange

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

- 8.1 Subject to the consultation arrangements in this clause, the Council shall retain responsibility for administering applications to exercise the Right to Exchange.
- 8.2 If a tenant serves an **Application to Exchange** on the **TMO**, the **TMO** shall pass the notice on to the Council within 7 days of receipt.
- 8.3 If a secure tenant in the **Property** who has the right to exchange under the rights of secure tenants in Section 92 of the Housing Act 1985 serves written notice on the Council (the "**Application to Exchange**") seeking consent to exchange their tenancy with another qualifying tenant with whom they may exercise the right to exchange, the Council shall consider the application and, within 28 days of receiving the **Application to Exchange**, notify the **TMO** whether or not the Council intends to consent to the exchange.
- 8.4 The policy and procedure for considering **Applications to Exchange** shall be the policy and procedure adopted from time to time by the Council (the "**Exchanges Policy**"). A copy of the **Exchanges Policy** as at the **STARTING DATE** of this Agreement forms Annex B to this chapter. In the event of the Council changing its exchanges policy and procedure, Annex B to this chapter shall be replaced with a copy of the revised **Exchanges Policy** on which shall be noted the date on which it came into effect. The Council shall, on request, provide any tenant in the **Property** with a copy of the current **Exchanges Policy**.
- 8.5 Within 14 days of receiving notification of the **Application to Exchange** the **TMO**, having considered whether or not the exchange proposed in the **Application to Exchange** should be approved or refused under the terms of the **Exchanges Policy**, may notify the Council of its opinion as to whether or not the Council should consent to the exchange. If the **TMO's** opinion of whether or not consent should be given to the **Application to Exchange** differs from the intention of the

Council, the **TMO** shall give written reasons to the Council why it considers that consent should be granted or refused.

- 8.6 If the **TMO's** opinion as to whether or not consent should be given to the **Application to Exchange** differs from the intention of the Council, the Council shall consider the **TMO's** opinion and, before granting or refusing consent to the **Application to Exchange**, shall in writing give a reasoned response to the **TMO's** opinion. The Council shall also advise the **TMO** whether or not, in the light of the **TMO's** opinion, the Council intends to consent to or refuse the **Application to Exchange** and, if approved, the date on which the exchange is to occur.

8 Administration of the Right to Exchange

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

- 8.1 The **TMO** is authorised to receive notices (an "**Application to Exchange**") from secure tenants who have the Right to Exchange under the rights of secure tenants in Section 92 of the Housing Act 1985 and to administer exchanges under the provisions of this clause.

- 8.2 If a tenant serves an **Application to Exchange** on the Council, the Council shall pass the notice on to the **TMO** within 7 days of receipt.

- 8.3 On receipt of an **Application to Exchange** the **TMO** shall consider the application in accordance with the policy and procedures set out in the Exchanges Policy (the "**Exchanges Policy**") which forms Appendix 3 to this chapter and decide whether or not to consent to the exchange proposed. Within 28 days of receiving the **Application to Exchange** the **TMO** shall in writing notify the Council (the "**Exchange Notice**") whether or not the **TMO** intends to consent to or refuse the exchange. The **TMO** shall not consent to any exchange until 7 days after the date of the **Exchange Notice** to the Council.

- 8.4 If the Council considers that the **TMO** has not correctly applied the **Exchanges Policy** the Council may, within 7 days of the date of the **Exchange Notice**, request the **TMO** in writing either:

- a) to refuse consent, giving reasons why the Council considers that consent should be refused; or
- b) to grant consent, giving reasons why the Council considers that consent should be granted.

- 8.5 If under the terms of clause 8.4 above, the Council requests the **TMO** to reconsider its intentions the **TMO** shall, within 14 days of receiving the Council's request and in accordance with the **Exchanges Policy**, reconsider the exchange proposed in the **Application to Exchange** before notifying the tenant and the Council in writing of its decision.

9 Administration of Transfers

9 *(Option A: the Council administers applications from tenants to transfer to other dwellings in the **Property** and in the rest of the Council's housing stock).*

9.1 The Council shall retain the responsibility for considering applications from tenants of dwellings in the **Property** to transfer to other dwellings in the **Property** or to other dwellings owned by the Council.

9.2 In considering applications for transfers the Council shall give equal and fair consideration to applications from tenants in the **Property** as it gives to other tenants in other properties owned by the Council.

9.3 The policy and procedure for considering transfer applications shall be the policy and procedure adopted from time to time by the Council (the "**Transfers Policy**"). A copy of the **Transfers Policy** as at the **STARTING DATE** of this Agreement forms Annex C to this chapter. If the Council changes its transfer policy and procedure, Annex C to this chapter shall be replaced with a copy of the revised **Transfers Policy** on which shall be noted the date on which it came into effect. The Council shall, on request, provide any tenant in the **Property** with a copy of the current **Transfers Policy**.

9 Administration of Transfers

9 *(Option B: the **TMO** considers and approves transfer within the **Property**, the Council retains the responsibility for considering and approving transfers to other properties owned by the Council).*

9.1 The **TMO** shall determine applications from tenants in the **Property** to transfer to other dwellings in the **Property**.

9.2 In determining applications for transfers the **TMO** shall apply the policy and procedure for considering and approving transfers (the "**Transfers Policy**"), a copy of which forms Appendix 4 to this chapter.

9.3 The Council shall determine applications from tenants of dwellings in the **Property** to transfer to other dwellings owned by the Council.

9.4 In determining applications for transfers to other dwellings owned by the Council, the Council shall give equal and fair consideration to applications from tenants in

the **Property** as it gives to applications from tenants in other properties owned by the Council, and shall apply its current policy and procedures for considering transfer applications.

9.5 The Council shall, on request, provide the **TMO** or any tenant in the **Property** with a copy of its current policy and procedure for considering transfer applications.

9.6 The **TMO** shall once each year give to the Council a statement of the transfers it has approved within the **Property** under the powers granted by this clause together with such details as the Council may reasonably require in order to show that the transfers have been approved in accordance with the **Transfers Policy**.

10 Administration of Applications to Sublet

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

10.1 The Council shall determine applications from secure tenants in the **Property** under section 93 of the Housing Act 1985 for consent to sublet part of their dwelling.

10.2 The policy and procedure for considering applications for subletting shall be the policy and procedure adopted from time to time by the Council (the "**Subletting Policy**"). A copy of the **Subletting Policy** as at the **STARTING DATE** of this Agreement forms Annex D to this chapter. If the Council changes its subletting policy and procedure, Annex D to this chapter shall be replaced with a copy of the revised **Subletting Policy** on which shall be noted the date on which it came into effect. The Council shall, on request, provide any tenant in the **Property** with a copy of the current **Subletting Policy**.

10 Administration of Applications to Sublet

10 *(Option B: the TMO considers and approves applications from tenants in the Property to sublet).*

10.1 The **TMO** shall determine applications from secure tenants in the **Property** under section 93 of the Housing Act 1985 for consent to sublet part of their dwelling.

10.2 In determining applications under clause 10.1 the **TMO** shall apply the Subletting Policy and Procedure set out in Appendix 5 to this chapter (the "**Subletting Policy**"). The **TMO** shall, on request, provide any tenant in the **Property** with a copy of the **Subletting Policy**.

10.3 The **TMO** shall once each year give to the Council a statement of the consents it has given to tenants to sublet under this clause together with such details as the Council may reasonably require in order to show that the consents have been given in accordance with the **Subletting Policy**.

11 Tenants' Handbook

- 11 *(Option A: the Council publishes a Tenants' Handbook, which amongst other things explains the role and function of the TMO).*
- 11 The Council shall publish a Tenants' Handbook which includes the following information:
- a) an explanation of the role of the **TMO** and the responsibilities it has taken on under the terms of this Agreement;
 - b) the rights of tenants in the **Property** to become members of the **TMO**;
 - c) a summary of the rights and obligations of tenants under their tenancy agreement;
 - d) the procedures for payment of **Rents** and **Service Charges** and for the prevention and control of arrears;
 - e) the procedures for reporting repairs (including emergencies outside the **TMO's** or the Council's normal working hours for receiving repair requests) and the **TMO's** and Council's target timescales for repairs (see chapter 2, appendices 1 and 2);
 - f) the procedures for dealing with neighbour disputes and harassment (see appendices 6 and 7 of this chapter);
 - g) the procedures for making complaints about the housing management service provided by the **TMO** or the Council; and
 - h) such other matters about the management of the **Property** as the Council considers appropriate or the **TMO** may reasonably require.

11 **Tenants' Handbook**

- 11 *(Option B: the TMO publishes a Tenants' Handbook, which amongst other things explains the role and function of the TMO).*
- 11 The **TMO** shall publish a Tenants' Handbook which includes the following information:
- a) an explanation of the role of the **TMO** and the responsibilities it has taken on under the terms of this Agreement;
 - b) the rights of tenants in the **Property** to become members of the **TMO**;
 - c) the decision making structures of the **TMO** (including copies of its rules and standing orders for general meetings, committees and sub-committees) and

how members of the **TMO** may, through the democratic structure and procedures of the **TMO**, participate in the decisions which affect the management of their homes;

- d) a summary of the rights and obligations of tenants under their tenancy agreement;
- e) how, where and when staff and officers of the **TMO** may be contacted (including where the **TMO's** office is located and details of opening times);
- f) the procedures for payment of **Rents** and **Service Charges** and for the prevention and control of arrears;
- g) the procedures for reporting repairs (including emergencies outside the **TMO's** or the Council's normal working hours for receiving repair requests) and the **TMO's** and Council's target timescales for repairs (see chapter 2, appendices 1 and 2);
- h) the procedures for dealing with harassment and neighbour disputes (see appendices 6 and 7 of this chapter);
- i) the procedures for making complaints about the housing management service provided by the **TMO** or the Council; and
- j) such other matters about the management of the **Property** as the Council may reasonably require.

12 Administration of the Right of Succession

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

- 12.1 The Council shall administer any claim that a person is qualified to succeed to the tenancy of a dwelling in the **Property** under sections 87 to 90 of the Housing Act 1985 (a "**Claim to the Right of Succession**"). A copy of the Council's policy for administering such claims is at Annex E to this chapter.
- 12.2 If the Council receives a **Claim to the Right of Succession** the Council shall, within 14 days of receiving the claim, inform the **TMO** in writing that the claim has been made.
- 12.3 If the Council accepts a **Claim to the Right of Succession** the Council shall, at the same time as it notifies the person or persons who made the claim that the Council accepts the claim, also in writing inform the **TMO** that the **Claim to the Right of Succession** has been accepted and the name of the person who has succeeded to the tenancy.

12 Administration of the Right of Succession

- 12 *(Option B: the TMO administers the **Right of Succession**).*
- 12.1 The **TMO** shall administer any claim that a person is qualified to succeed to the tenancy of a dwelling in the **Property** under sections 87 to 90 of the Housing Act 1985 (a "**Claim to the Right of Succession**").
- 12.2 If the **TMO** receives a **Claim to the Right of Succession** the **TMO** shall within 14 days inform the Council in writing that the claim has been made.
- 12.3 The **TMO** shall consider any **Claim to the Right of Succession** in accordance with the policy and procedures set out in the policy (the "**Right of Succession Policy**") which forms Annex E to this chapter. Within 28 days of receiving the **Claim to the Right of Succession** the **TMO** shall give to the Council written notice (the "**Right of Succession Notice**") whether or not the **TMO** intends to accept the claim. The **TMO** shall not accept any claim until 7 days after the date on which it gave the **Right of Succession Notice** to the Council.
- 12.4 If the Council considers that the **TMO** has not correctly applied the **Right of Succession Policy** the Council may, within 7 days of the date on which it received the **Right of Succession Notice**, request the **TMO** in writing either:
- a) to refuse the **Claim to the Right of Succession** giving reasons why the Council considers that the claim should be refused; or
 - b) to accept the **Claim to the Right of Succession** giving reasons why the Council considers that the claim should be accepted.
- 12.5 The **TMO** shall, within 14 days of receiving a request under clause 12.4 above, consider the **Claim to the Right to Succession** again and notify the Council of its decision.

13 Giving consents to tenants, leaseholders and freeholders

- 13 *(Option A: the Council is responsible for consenting to such matters as keeping pets and parking permits).*
- 13.1 If under the terms of a tenancy agreement, lease or freehold transfer any person living in the **Property** requires the consent of the Council for any purpose not covered by any other clause in this Agreement the Council shall retain responsibility for receiving requests for consent and for giving, refusing and withdrawing consent.
- 13 *(Option B: the TMO is responsible for consenting to such matters as keeping pets and parking permits).*

- 13.1 If under the terms of a tenancy agreement, lease or freehold transfer any person living in the **Property** requires the consent of the Council for any purpose not covered by any other clause in this Agreement the **TMO** shall be responsible for receiving requests for consent and for giving, refusing and withdrawing consent.

14 Right to Buy and Sales

14 *(Option A: for a TMO with no Rent collection or arrears control responsibilities). [Link to chapter 3, clause 1, option A and clause 2, options A or B].*

14.1.1 The Council shall consult the **TMO** about the general terms and conditions of sale of dwellings in the **Property**. The Council shall also:

- a) provide the **TMO** with a copy of the terms and conditions of sales; and
- b) give the **TMO** not less than one month's advance written notice of any proposed change to the terms and conditions of sales.

14.1.2 The **TMO** may request the Council to alter any of the terms and conditions of sale which directly affects the **TMO's** responsibilities under this Agreement, and the Council shall not unreasonably refuse to make or delay in making the alteration requested.

14.2 If a tenant of a dwelling in the **Property** serves notice claiming to exercise the **Right to Buy** the Council shall as soon as possible inform the **TMO** in writing that the notice has been received. The Council shall keep the **TMO** informed of the progress of the claim.

14.3 The **TMO** shall, within 14 days of receiving a written request from the Council supply the Council with any information the Council may reasonably require in order to comply with obligations under Part V of the Housing Act 1985.

14.4 The Council shall give the **TMO** not less than 7 days notice in writing of the anticipated date of completion of the sale of any dwelling in the **Property** under Part V of the Housing Act 1985.

14 Right to Buy and Sales

14 *(Option B: for a TMO with Rent collection and arrears control responsibilities but not tenancy determination). [Link to chapter 3, clause 1, option B and clause 2, option C].*

- 14.1.1 The Council shall consult the **TMO** about the general terms and conditions of sale of dwellings in the **Property**. The Council shall:
- a) provide the **TMO** with a copy of the terms and conditions of sale; and
 - b) give the **TMO** not less than one month's advance written notice of any proposed change to the terms and conditions of sale.
- 14.1.2 The **TMO** may request the Council to alter any of the terms and conditions of sale which directly affects the **TMO's** responsibilities under this Agreement, and the Council shall not unreasonably refuse to make or delay in making the alteration requested.
- 14.2 If a tenant of a dwelling in the **Property** serves notice on the Council claiming to exercise the **Right to Buy** the Council shall notify the **TMO** in writing within 14 days. The Council shall also notify the **TMO** in writing within 14 days of the occurrence of any of the following:
- a) the service of a notice under section 124 of the Housing Act 1985 admitting or denying the **Right to Buy**; or
 - b) the service of a notice 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; or
 - c) the service of a notice under section 140 or 141 of the Housing Act 1985 requiring the tenant to complete; or
 - d) receipt of any notice served under section 144 of the Housing Act 1985 claiming to exercise the right to acquire on rent to mortgage terms; or
 - e) the receipt or service by the Council of any notice served under section 153A of the Housing Act 1985; or
 - f) the withdrawal of a notice claiming to exercise the **Right to Buy**.
- 14.3 The **TMO** shall, 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 obligations under Part V of the Housing Act 1985.
- 14.4 The Council shall give the **TMO** not less than 7 days notice in writing of the anticipated date of completion of the sale of any dwelling on the **Property** under Part V of the Housing Act 1985. On receipt of this notice the **TMO** shall immediately notify the Council in writing of any arrears of **Rent**.
- 14.5 The Council shall not complete the sale of any dwelling in the **Property** if the tenant has failed to pay the **Rent** or any other payment due from him as a tenant for

a period of four weeks after it has been lawfully demanded and the whole or part of that payment remains outstanding. The Council shall, before completing the sale of any dwelling in the **Property**, use reasonable endeavours to recover from the tenant any arrears notified to the Council under clause 14.4 above.

14 Right to Buy and Sales

14 (Option C: for **TMO** which has **Rent** collection arrears and termination of tenancy responsibilities). [Link to chapter 3, clause 1, option B and clause 2, options D or E].

14.1.1 The Council shall consult the **TMO** about the general terms and conditions of sale of dwellings in the **Property**. The Council shall:

- a) provide the **TMO** with a copy of the terms and conditions of sale; and
- b) give the **TMO** not less than one month's advance written notice of any proposed change to the terms and conditions of sale.

14.1.2 The **TMO** may request the Council to alter any of the terms and conditions of sale which directly affects the **TMO's** responsibilities under this Agreement, and the Council shall not unreasonably refuse to make or delay in making the alteration requested.

14.2 If a tenant of a dwelling in the **Property** serves notice on the Council claiming to exercise the **Right to Buy** the Council shall notify the **TMO** in writing within 14 days. The Council shall also notify the **TMO** in writing within 14 days of the occurrence of any of the following:

- a) the service of a notice under section 124 of the Housing Act 1985 admitting or denying the **Right to Buy**; or
- b) the service of a notice 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; or
- c) the service of a notice under section 140 or 141 of the Housing Act 1985 requiring the tenant to complete; or
- d) receipt of any notice served under section 144 of the Housing Act 1985 claiming to exercise the right to acquire on rent to mortgage terms;
- e) the receipt or service by the Council of any notice served under section 153A of the Housing Act 1985; or
- f) the withdrawal of a notice claiming to exercise the **Right to Buy**.

- 14.3 The **TMO** shall, 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 obligations under Part V of the Housing Act 1985.
- 14.4 The **TMO** shall 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 14.2 that a tenant has served a notice claiming to exercise the **Right to Buy**.
- 14.5 The Council shall:
- 14.5.1 give the **TMO** not less than 7 days notice in writing of the anticipated date of completion of the sale of any dwelling in the **Property** under Part V of the Housing Act 1985. On receipt of this notice the **TMO** shall immediately notify the Council in writing of any arrears of **Rent**, and
- 14.5.2 not complete the sale of any dwelling in the **Property** if the tenant has failed to pay the **Rent** or any other payment due from him as a tenant for a period of four weeks after it has been lawfully demanded and the whole or part of that payment remains outstanding. The Council shall also, before completing the sale of any dwelling on the **Property**, use reasonable endeavours to recover from the tenant any arrears notified under clause 14.5.1.

14 Right to Buy and Sales

14 *(Option D: for a **TMO** which has **Rent** collection arrears and termination of tenancy responsibilities and which also wishes to take responsibility for receiving Right to Buy applications from secure tenants). [Link to chapter 3, clause 1, option B and clause 2, options D or E].*

- 14.1 The Council shall consult the **TMO** about the general terms and conditions of sale of dwellings in the **Property**. The Council shall:
- a) provide the **TMO** with a copy of the terms and conditions of sale; and
- b) give the **TMO** not less than one month's advance written notice of any proposed change to the terms and conditions of sale.
- 14.2 If a tenant of a dwelling in the **Property** serves notice claiming to exercise the **Right to Buy** the Council shall as soon as possible inform the **TMO** in writing that the notice has been received. The Council shall keep the **TMO** informed of the progress of the claim.

- 14.3 The **TMO** is authorised to receive notices from secure tenants of dwellings in the **Property** claiming to exercise the **Right to Buy**.
- 14.4 The **TMO** shall:
- a) give to a secure tenant a form prescribed by the Secretary of State under section 176 of the Housing Act 1985 to be served as a notice claiming to exercise the **Right to Buy** within 7 days of receipt of a request for the form from the tenant;
 - 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; and
 - c) within two days of receipt, send to the Council any notice claiming to exercise the **Right to Buy**.
- 14.5 The "relevant time" for the purposes of section 122 of the Housing Act 1985 is the date of receipt by the **TMO** of the notice referred to in clause 14.4(c).
- 14.6 The Council shall notify the **TMO** within 14 days of any of the following events occurring:
- a) the service of a notice under section 124 of the Housing Act 1985 admitting or denying the **Right to Buy**; or
 - b) the service of a notice 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; or
 - c) the service of a notice under section 140 or 141 of the Housing Act 1985 requiring the tenant to complete; or
 - d) receipt of any notice served under section 144 of the Housing Act 1985 claiming to exercise the right to acquire on rent to mortgage terms; or
 - e) the receipt or service by the Council of any notice served under section 153A of the Housing Act 1985; or
 - f) the withdrawal of a notice claiming to exercise the **Right to Buy**.
- 14.7 The **TMO** shall, within 14 days of receiving a written request, supply the Council with any information the Council may reasonably require in order to comply with obligations under Part V of the Housing Act 1985.
- 14.8 The **TMO** shall 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 14.2 that a tenant has served a notice claiming to exercise the **Right to Buy**.

- 14.9 The Council shall give the **TMO** not less than 7 days notice in writing of the anticipated date of completion of the sale of any dwelling in the **Property** under Part V of the Housing Act 1985. On receipt of this notice the **TMO** shall immediately notify the Council in writing of any arrears of **Rent**.
- 14.10 The Council shall not complete the sale of any dwelling in the **Property** if the tenant has failed to pay the **Rent** or any other payment due from him as a tenant for a period of four weeks after it has been lawfully demanded and the whole or part of that payment remains outstanding. The Council shall also, before completing the sale of any dwelling on the **Property**, use reasonable endeavours to recover from the tenant any arrears notified under clause 14.9.

15 Tenancy Disputes

15 *(Option A: the Council retains responsibility for dealing with disputes).*

- 15 The Council shall retain responsibility for dealing with disputes between lawful residents in the **Property**. The Council shall deal with such disputes in accordance with the standard policy and procedures it applies to dealing with such disputes in other properties owned by the Council.

15 Tenancy Disputes

15 *(Option B: the TMO has delegated authority to deal with tenancy disputes).*

- 15.1 If the **TMO** receives from any lawful resident in the **Property** ("the **Aggrieved Person**") who is in dispute with any other person, a written request (a "**Complaint**") requesting the **TMO** to take action against that other person, the **TMO** shall within 21 days (or such other time limit as may be reasonable in the circumstances) investigate the **Complaint** and decide whether the matter complained of constitutes a breach of tenancy, lease or freehold covenant ("**Breach of Tenancy**").
- 15.2 If the **TMO** considers that the matter complained of constitutes a **Breach of Tenancy** the **TMO** shall take action to ensure that the breach is remedied (see clause 5 above).
- 15.3 If the **TMO** considers that the matter complained of does not constitute a **Breach of Tenancy** the **TMO** shall try to resolve the dispute by following the Tenancy Disputes Policy which forms Appendix 6 to this chapter.

16 Harassment

16 *(Option A: the Council retains responsibility for dealing with harassment).*

(Drafting Note: must be used if Option A of clause 15 is used).

16 The Council shall retain responsibility for investigating allegations of racial or other harassment and dealing with cases of harassment which affect any resident in the **Property**. The Council shall deal with such cases of harassment in accordance with the standard policy and procedures it applies to cases of harassment affecting residents in other properties owned by the Council.

16 Harassment

16 *(Option B: the TMO has delegated authority to deal with cases of harassment).*

(Drafting Note: must be used if Option B of clause 15 is used).

16.1 The **TMO** shall investigate and take action to deal with cases of racial or other harassment in accordance with the provisions of this clause.

16.2 If any resident in the **Property** (a "**Harassed Person**") makes a complaint either in person or in writing (a "**Harassment Complaint**") the **TMO** shall immediately record and investigate the **Harassment Complaint** in accordance with the policy and procedure for dealing with cases of harassment (the "**Harassment Policy**") which forms Appendix 7 to this chapter. While the **Harassment Complaint** is being investigated the **TMO** shall, without prejudicing the objectivity of its investigations, give the **Harassed Person** any support and protection needed to prevent the **Harassed Person** suffering the effects of the harassment of which the **Harassed Person** has complained.

16.3 If the **TMO** considers that a **Harassment Complaint** is justified and the **Harassed Person** is the victim of racial or other harassment the **TMO** shall in accordance with the **Harassment Policy** take such action as may be appropriate to support and protect the **Harassed Person** and prevent the harassment recurring, including where necessary expediting action to evict any tenant who may be guilty of harassment.

16.4 The **TMO** shall, immediately its investigation of the **Harassment Complaint** has been concluded:

- a) inform the **Harassed Person** in writing of the investigations it has carried out and the conclusions the **TMO** has reached; and of any actions the **TMO** proposes to take or recommend the Council to take in accordance with the **Harassment Policy** to prevent harassment recurring and to protect and support the **Harassed Person**; and
- b) send to the Council a report of its investigations and the details of the action it proposes to take or recommends the Council to take.

16.5 If the **Harassed Person** is dissatisfied with the **TMO's** investigation or the action the **TMO** proposes to take or recommends the Council to take or the support to the

victims of harassment the **TMO** has offered and complains in writing to the Council, the Council shall as soon as possible and at the latest within 14 days of receiving the complaint review the action the **TMO** has taken and, in writing, either:

- a) if the Council decides that the **Harassment Complaint** has not been dealt with appropriately in accordance with the **Harassment Policy and Procedures**:
 - i) notify the **TMO** what further action the Council considers the **TMO** should take to deal with the **Harassment Complaint** and copy its notification to the **Harassed Person**; or
 - ii) notify the **TMO** and the **Harassed Person** that the Council considers that the **TMO** has not taken appropriate action as required by the **Harassment Policy and Procedures** and that the Council intends to take over the handling of the **Harassment Complaint** and inform the **Harassed Person** of the action the Council intends to take;

or,

- b) if the Council decides that the **TMO** has dealt with the **Harassment Complaint** appropriately in accordance with the **Harassment Policy and Procedures** notify the **Harassed Person** and the **TMO** of that decision and of the reasons for that decision.

16.6 If the Council decides that the **TMO** has not dealt with a **Harassment Complaint** in accordance with the **Harassment Policy and Procedures** and the Council takes over the handling of a **Harassment Complaint** under the terms of clause 16.5 a) ii) above the **TMO** shall pay to the Council the costs the Council reasonably incurs in dealing with the **Harassment Complaint**.

17 Use of the Property

17.1 The **TMO** shall not without the prior written consent of the Council:

- a) permit the dwellings in the **Property** to be used other than as private dwellings;
- b) grant to the occupiers of any adjoining properties any right to use the **Property** or services in or under the **Property** or admit any claim to such a right;
- c) do or permit on the **Property** any act which is noisy, dangerous, offensive or illegal;
- d) sell or permit the sale of alcohol on the **Property**; or

e) display or permit the display of any advertisement on the **Property**.

17.2 The **TMO** shall not without the prior written consent of the Council which shall not be unreasonably withheld or delayed rehabilitate, modernise, alter, or improve any existing structure in the **Property** or construct any new building. Nothing in this clause shall constrain the Council in exercising its legal powers under the Planning Acts or any other Act of Parliament.

CHAPTER 5

APPENDIX 1

Nominations Procedure

CHECKLIST

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.

1 Information to Applicants

 **Set out arrangements for providing information on the TMO to potential applicants**

For example:

- *what information about the TMO is supplied to applicants prior to being nominated*
- *how clause 1 arrangements will be linked into the nominations process*
- *how applicants will be notified of their nomination*

2 Method used for nominations

 **Specify the method(s) to be used for nominations**

For example:

- *one nominee for each vacancy*
- *a specified number of nominees for each vacancy*
- *council nominations to TMO maintained waiting lists upon request or throughout the year*
- *a council maintained pool of nominees for all TMOs*
- *any alternative referral agencies to be used for specified percentages of nominees*
- *any nomination obligations for internal transfers especially if clause 2 option B is used*

 **Specify the information to be provided to the TMO about nominees**

For example:

- *personal information required to allow the TMO to monitor its performance against its equal opportunities obligations*
- *Data Protection Act considerations*
- *details of council priorities when nominating and whether council ranks nominees in priority order for the TMO to consider especially where those nominated come from more than one council maintained list*



Set out the timescales for requesting and supplying nominees

For example:

- *definitions of voids for which nominations should be sought*
- *method of requesting nominees including details required from the TMO in order for the council to make appropriate nominations such as type and location of property*
- *timescale for the council to supply nominee(s)*



Set out the criteria upon which nominations may be returned to the council

For example:

- *if nominees refuse offer(s) of accommodation*
- *if there are no suitable properties*
- *if the nominee does not wish to live in the TMO's area*
- *because the nominee's circumstances have changed, and they no longer have priority under the **Priority Allocations Scheme***
- *the nominee had given fraudulent information on their application*
- *if the nominee does not fulfil the TMO's membership criteria, if any*

3

Record Keeping



Specify the records to be kept by and whom by

For example:

- *nominees supplied by the council by specified categories*
- *nominees returned to the council*
- *nominees offered accommodation by the TMO*
- *nominees housed by the TMO*
- *timescales for nominations achieved*
- *link to TMO equal opportunities monitoring obligations*

APPENDIX 2

Priority Allocations Scheme

CHECKLIST

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.

1 Statement of the basis on which allocations decisions will be made.



Set out the principles involved in allocating tenancies

For example:

- *assessment of housing need*
- *link to equal opportunities policy, target groups and procedures for ensuring that the TMO is representative, democratic and accountable*
- *which applicants are eligible to be considered under this policy such as applicants nominated by the council, internal transfer applicants, applicants from specified referral agencies*
- *any additional TMO membership criteria for allocating tenancies*

2 Housing Need



Set out the arrangements for assessing housing need

For example:

- *by the council prior to nomination or*
- *procedures for TMO assessment: whether home visits are conducted and by whom, whether interviews will be conducted and by whom, whether the council will be involved in the process*



If the TMO is assessing housing need, set out how decisions will be made that can be objectively monitored

For example:

- *family size*
- *overcrowding*
- *condition of current accommodation*
- *suitability of current accommodation*
- *basic amenities of current accommodation*
- *whether current accommodation is shared*
- *the suitability of the area*
- *any incidence of harassment or domestic violence*
- *cases of relationship breakdown*
- *the need for a particular type of housing such as sheltered or supported housing*



Set out the TMO's priority system for allocating tenancies with due regard to the Council's statutory duties

For example:

- in accordance with TMO determined priorities of applicants nominated for specific vacancies
- in accordance with TMO determined priorities of applicants nominated from a variety of sources
- in accordance with council determined priorities notified at the point of nomination
- by maintaining waiting list(s) or points systems
- any consideration given to the length of time applicants have been on the waiting lists
- the role of TMO interviews in the process
- link to TMO Transfers Policy

4 Information to applicants



Set out what arrangements will be made for liaising with applicants about their rehousing status

For example:

- *where a nomination is returned*
- *when priority is determined*
- *where an applicant does not receive priority*
- *where an applicant is refused under any additional TMO membership criteria, if any*
- *how any rights of appeal by applicants against housing need or additional TMO membership criteria assessments will be administered and by whom*

5 Record keeping and monitoring



Specify the records to be kept and who by

For example:

- *breakdown of applications for housing received*
- *applicants accepted onto TMO lists, if any*
- *number and source of applicants housed*
- *timescales for allocations achieved*
- *link to TMO equal opportunities monitoring obligations*

APPENDIX 3

Exchanges Policy (If Clause 8, option B is chosen)

CHECKLIST

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.



Set out procedure for responding to requests for mutual exchange

For example:

- *who handles requests*
- *written response must be made within 42 days*
- *permission must be granted unless one or more of the grounds for refusal applies*
- *if request refused, grounds for refusal must be specified*



Set out grounds for refusal

For example:

- *there is a possession order against the tenant*
- *possession proceedings have started, or a Notice Seeking Possession has been served*
- *the property would be underoccupied*
- *the property is not suitable for the tenant's needs*
- *the property is not mainly for housing services*
- *the property was let as tied accommodation*
- *the property has been specifically designed or adapted for someone with physical disabilities and the incoming tenant does not have those needs*
- *the dwelling is one of a group let to people with special needs and the incoming tenant does not have those needs*
- *the incoming tenant is not prepared to become a member of the TMO (see Ground 10 of Schedule 3 Housing Act 1985, if applicable)*



Set out grounds for conditional consent to be given

For example:

- *rent arrears are paid off*
- *a breach of tenancy conditions to be remedied*



Set out any notification requirements

For example:

- *to the tenants concerned*
- *to the Council/TMO*

- *any TMO committees who require the information*
- *to whoever is responsible for maintaining rent accounts*

APPENDIX 4

Transfers Policy

CHECKLIST

(If clause 9 option B chosen)

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.



Set out procedures for tenants to apply for transfer applications

For example:

- *where applications should be made and to whom*
- *whether registration on council waiting lists required*
- *what information or evidence should be submitted in support of any application*



Set out the TMO's policy for assessing the priority of transfer applicants within the property

For example:

- *overcrowding*
- *suitability of current accommodation*
- *incidence of harassment or domestic violence*
- *the need for a particular type of dwelling, eg sheltered accommodation*
- *length of time on the transfer list*
- *underoccupation of current dwelling*



Set out any other criteria which will be taken into account

For example:

- *arrears of rent*
- *special consideration to be given to management transfers*



Set out arrangements for approving transfer applications

For example:

- *what specific council involvement, if any*
- *what links to the **Priority Allocations Scheme***

APPENDIX 5

Subletting Policy

CHECKLIST

(If clause 10, Option B chosen).

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.



Set out procedures for tenants to apply to sublet

For example:

- *where applications should be made and to whom*
- *what information should be submitted in support of any application*



Set out how requests to sublet will be dealt with

For example:

- *who will handle the request*
- *permission can only be refused where:*
 - *it will lead to overcrowding within the meaning of the 1985 Housing Act 1985*
 - *works are planned to the property which would affect the accommodation occupied by the sub tenant*



Set out arrangements for replying to requests to sublet

For example:

- *timetable for a response*
- *written reasons to be given for any refusal*
- *what notification is required to be sent to the Council or TMO committees*

APPENDIX 6

Tenancy Disputes Policy

CHECKLIST

(if clause 15 option B chosen)

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.



Set out the intentions of this policy

For example:

- *who is eligible to complain*
- *the type of complaints covered under this policy*
- *any complaints considered to be outside the remit of this policy*
- *link to other relevant policies and procedures*



Set out how complaints should be made

For example:

- *whether all complaints must be in writing*
- *what help is available to those who would like support in making a written complaint*
- *where complaints should be sent and to whom*



Set out the rights of both parties to the complaint

For example:

- *confidentiality guarantees*
- *rights of representation*
- *rights to be accompanied during any investigation by friend, witness or advocate*
- *provide for the support of translators or interpreters at all stages as appropriate*



Set out how complaints will be investigated

For example:

- *who will investigate complaints and, if appropriate, how such individuals are chosen*
- *how checks will be made to ensure that complaint is covered by this policy and within the TMO's remit*
- *that face to face interviews will be used wherever possible or sensible*
- *that those investigating will consider other relevant TMO policies and will use other evidence: police, medical, surveyors reports etc*

- *procedures ensure those investigating refer to appropriate authorities, rather than endanger themselves or others*
- *what timetable must be met to ensure prompt investigation of all complaints*
- *that those investigating will endeavour to ensure that all possible remedies (such as mediation, warning, physical works, help from outside agencies, Social Services, transfer opportunities) are considered before action under the tenancy agreement or other legal remedies (such as environmental health, criminal, planning, injunctions) are considered*



Set out how decisions will be taken and communicated

For example:

- *how those investigating will report and to whom*
- *what reports should cover:*
 - *whether complaint upheld*
 - *what action agreed between tenants and what evidence of agreement required*
 - *what support the TMO could offer*
 - *what action should be taken by the TMO including any legal action under the tenancy agreement or other policies*
- *who approves recommendations*
- *how any agreements reached will be monitored and what sanctions will be taken if agreements are breached*
- *any rights of appeal against decisions, the appeal body and the time limit for appeals*
- *what is reported to TMO while preserving any confidentiality commitments*



Set out record keeping and monitoring requirements

For example:

- *specifying how records of investigations are kept and who has access to them*
- *specifying what monitoring of the use and effectiveness of this policy will be carried out*
- *specifying how frequently these arrangements will be reviewed and by whom*

APPENDIX 7

Harassment Policy

CHECKLIST

(If Clause 16, Option B chosen)

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.



State a definition of harassment

For example:

- *physical attacks or threats of violence*
- *damage to property*
- *verbal abuse or any other form of harassment which deprives a resident of the peaceful enjoyment of their home*
- *abusive or threatening graffiti*



Set out how allegations of harassment should be made

For example:

- *see Tenancy Disputes Policy suggestions*



Set out what support and protection the TMO is in a position to offer

For example:

- *in discussion with the victim*
- *immediately an allegation is made*
- *link to other relevant policies such as maintenance/ transfers*
- *longer term solutions*



Set out how allegations of harassment will be investigated

For example:

- *see Tenancy Disputes Policy suggestions*
- *what happens if the perpetrator is not a resident of the TMO*
- *what other agencies can be contacted for assistance*
- *who will ensure contact with other agencies and the police as appropriate*



Set out how decisions will be taken and communicated

For example:

- *see Tenancy Disputes Policy suggestions*
- *what action will be taken against the perpetrators*



Set out record keeping and monitoring requirements

For example:

- *see Tenancy Disputes Policy suggestions*
- *how any incidence of harassment will be regularly monitored*
- *mechanisms to ensure there is regular monitoring of the incidence of harassment across the property managed by the TMO*
- *regular monitoring and review of the effectiveness of actions taken*

ANNEX A

Tenancy Agreement

A copy of the tenancy agreement to be used in respect of the **Property** at the **STARTING DATE** substituted as varied from time to time.

ANNEX B

(If Clause 5, option A is chosen)

A copy of the Council's policy for administering exchanges

ANNEX C

(If Clause 9, option A is chosen)

A copy of the Council's policy for administering transfers

ANNEX D

(If Clause 10, option A is chosen)

A copy of the Council's policy for administering applications to sublet

ANNEX E

(If Clause 12, option A is chosen)

Right of Succession

A copy of the Council's policy for administering the succession rights of secure tenants.

CHAPTER 6

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

1 The transfer of staff from the Council to the TMO by the Transfer of Undertakings (Protection of Employment) Regulations 1981

1 (Option A: the Council and the TMO take the view that the Transfer of Undertakings (Protection of Employment) Regulations 1981 do not apply).

1.1 The Council and the TMO take the view that there is no transfer of an undertaking under this Agreement and therefore there are no staff with an automatic right to transfer to the employment of the TMO.

1.2 The Council undertakes to indemnify the TMO against any costs damages or expenses arising out of or in connection with any claim by any person employed by the Council on or before the **STARTING DATE** that there was a transfer of an undertaking on that date and that that person had a right to be employed by the TMO provided that the Council's liability shall not include any damages costs or expenses incurred by the TMO which have not been approved in writing by the Council, such approval not to be unreasonably withheld or delayed.

1 The transfer of staff from the Council to the TMO by the Transfer of Undertakings (Protection of Employment) Regulations 1981

1 (Option B: the Council and the TMO take the view that the Transfer of Undertakings (Protection of Employment) Regulations 1981 do apply).

1.1 The Council and the TMO take the view that there is a transfer of an undertaking under this Agreement and that therefore the staff listed at Appendix 1 have an automatic right to transfer to the employment of the TMO on the same terms and conditions, except in relation to pension rights, as they have with the Council.

1.2 The Council's terms and conditions for the staff listed at Appendix 1 are set out briefly in Appendix 1 and the Council warrants and covenants to the TMO that:

- a) to the best of its knowledge and belief the details in that Appendix 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 and will have paid or will pay any amounts such as National Insurance contributions due for the period up to and including the **STARTING DATE**;
- d) subject to any duties of confidentiality that the Council may owe to those staff the Council has disclosed in writing to the **TMO** 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 **TMO** against any costs damages or expenses arising out of or in connection with any breach of the warranties and covenants in clause 1.2 above and any claim by any person employed by the Council on or before the **STARTING DATE** and not listed in Appendix 1 that that person had a right to be employed by the **TMO** provided that the Council's liability shall not include any costs of the **TMO** or any settlement of any claim by the **TMO** unless the costs or settlement have been approved in writing by the Council, such approval not to be unreasonably withheld or delayed.

1.4 *The **Approved Person** (who is the person who under the **Regulations** proposes the terms of the agreement) may propose here a clause to impose requirements on either the **TMO** or the Council relating to pension entitlements of staff.*

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

2.1 The duties of any staff employed by the **TMO** and their terms and conditions of employment (including salaries and rates of pay) shall be determined by the **TMO** and copies of the **TMO's** recruitment policy, disciplinary procedure and standard terms and conditions are in Annex A to this chapter.

2.2 In employing the Staff the **TMO** shall comply with:

- a) the **TMO's** Equal Opportunities Policy and Procedures (see chapter 1 clause 9), and
- b) the obligations imposed by statute including:

The Contracts of Employment Act 1982
 The Health & Safety at Work Act 1974
 The Office, Shops & Railways Premises Act 1964
 The Sex Discrimination Act 1975
 The Race Relations Act 1976.

3 Employment of Contractors

3 *(Option A: TMO free to choose contractors for contracts under stated amount, uses contractors from Council's approved list for sums over stated amounts).*

3.1 The **TMO** shall establish an approved list of contractors ("the **TMO's Approved List**") to provide the services the **TMO** considers it needs to contract out in order to fulfil its obligations under this Agreement. The **TMO** shall not let a contract to any contractor not on the **TMO's Approved List**.

3.2 The **TMO** shall only appoint contractors to the **TMO's Approved List** who:

- a) have the capacity to do work required by the **TMO** to an acceptable standard of quality;
- b) have adequate public and employers liability insurance, or professional indemnity insurance if appropriate;
- c) give the **TMO** an undertaking to comply with obligations imposed by statute including:

The Contracts of Employment Act 1982
The Health & Safety at Work Act 1974
The Office, Shops & Railways Premises Act 1964
The Sex Discrimination Act 1975
The Race Relations Act 1976.

- 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 EC; and
- e) if they are to service or install gas appliances are registered with the Council for the Registration of Gas Installers or another equivalent body in another Member State of the EC.

3.3 If, in order to fulfil its obligations under this Agreement the **TMO** lets a contract for management, support, repairs or other services, or for **Major Works** the **TMO** shall let the contract:

- a) if the value of the contract is less than the **CONTRACT WORKS LIMIT**, to a contractor on the **TMO's Approved List**;
- b) if the value of the contract is greater than the **CONTRACT WORKS LIMIT**, to a contractor on the Council's approved list of contractors ("the **Council's Approved List**").

- 3.4 The Council may request the **TMO** to remove a contractor from the **TMO's Approved List**. The request shall be in writing and shall state the reasons why the Council considers that the contractor should be removed from the **TMO's Approved List**. The **TMO** shall give proper consideration to a request from the Council and shall within three months of receiving the request inform the Council in writing of the **TMO's** decision. If the **TMO** decides not to remove the contractor from the **TMO's Approved List**, the **TMO** shall give the Council written reasons for the **TMO's** decision.
- 3.5 The **TMO** may request the Council to include a contractor on the **Council's Approved List**, which inclusion shall not unreasonably be refused or delayed. If the Council refuses to include the Contractor on the **Council's Approved List** the Council shall in writing notify the **TMO** of the reasons for the refusal.
- 3.6 The **TMO** may request the Council to remove a contractor from the **Council's Approved List**. The request shall be in writing and shall state the reasons why the **TMO** considers that the contractor should be removed from the **Council's Approved List**. The Council shall give proper consideration to a request from the **TMO** and shall within 3 months of receiving the request inform the **TMO** in writing of the Council's decision. If the Council decides not to remove the contractor from the **Council's Approved List** the Council shall give the **TMO** written reasons for the Council's decision.
- 3.7 In any case where EC Directive 77/62 (award of public supply contracts), 71/305 (award of public works contracts), or 92/50 (award of public service contracts) applies, the preceding clauses shall not apply in so far as they are incompatible with obligations arising under the Directive or measures implementing the Directive in the United Kingdom.

3 Employment of Contractors

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

- 3.1 The **TMO** shall establish a list of contractors (the "**TMO's Approved List**") to provide the services the **TMO** considers it needs to contract out in order to fulfil its obligations under this Agreement. The **TMO** shall not let a contract to any contractor not on the **TMO's Approved List**.
- 3.2 The **TMO** shall only appoint contractors to the **TMO's Approved List** who:
- a) have the capacity to do work required by the **TMO** to an acceptable standard of quality;
 - b) have adequate public and employers liability insurance, or professional indemnity insurance if appropriate;

- c) give the **TMO** an undertaking to comply with obligations imposed by statute including:

The Contracts of Employment Act 1982
The Health & Safety at Work Act 1974
The Office, Shops & Railways Premises Act 1964
The Sex Discrimination Act 1975
The Race Relations Act 1976.

- 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 EC; and
- e) if they are to service or install gas appliances are registered with the Council for the Registration of Gas Installers or another equivalent body in another Member State of the EC.

3.3 If, in order to fulfil its obligations under this Agreement the **TMO** lets a contract for management, support, repairs or other services, or for **Major Works** the **TMO** shall let the contract to a contractor on the **TMO's Approved List**.

3.4 The Council may request the **TMO** to include a contractor on the **TMO's Approved List**, which inclusion shall not unreasonably be refused or delayed. If the **TMO** refuses to include a contractor requested by the Council on the **TMO's Approved List** the **TMO** shall notify the Council in writing of the reasons for the refusal.

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

- 3.6 In any case where EC Directive 77/62 (award of public supply contracts), 71/305 (award of public works contracts), or 92/50 (award of public service contracts) applies, the preceding clauses shall not apply in so far as they are incompatible with obligations arising under the Directive or measures implementing the Directive in the United Kingdom.

4 Access to Council Officers

- 4.1 On or before the **STARTING DATE** the Council shall inform the **TMO** in writing of the names, addresses and telephone numbers of the officers of the Council the **TMO** may need to contact in order to fulfil its obligations under this Agreement (the "**List of Council Officers**").
- 4.2 The Council shall also inform the **TMO** in writing of any change in the **List of Council Officers** within 7 days of the change.

5 Liaison Officers

- 5.1 On or before the **STARTING DATE** the Council shall nominate an officer from the staff concerned with the management of the Council's housing to be the **LIAISON OFFICER** between the Council and the **TMO**. The **LIAISON OFFICER** shall be the **TMO's** first point of contact on day to day matters concerning the operation of this Agreement and the obligations of the **TMO** and the Council under this Agreement.
- 5.2 The Council may by written notice to the **TMO** change the **LIAISON OFFICER**.
- 5.3 If invited to do so by the **TMO**, the **LIAISON OFFICER** may attend and speak (but not vote) at all meetings of the **TMO**, its committees or sub-committees. The **TMO** shall send the **LIAISON OFFICER** copies of all agendas, papers and minutes of general meetings, committee meetings and sub-committee meetings.
- 5.4 The Council shall treat all matters concerning the **TMO** and the operation of this Agreement as confidential except that the Council shall be entitled to account to its electors for the work of the **TMO** by:
- a) publishing statistics which show the performance of the **TMO**;
 - b) publishing the **TMO's** policies and procedures;
 - c) making statements or making available such other information as may reasonably be necessary to publicly account for the **TMO's** actions or the Council's decisions relating to the **TMO**; and
 - d) with the consent of the **TMO**, which shall not be unreasonably withheld or delayed, provide such other information about the **TMO** as the Council considers desirable.

- 5.5 On or before the **STARTING DATE** the **TMO** shall nominate a person who may be a member of the Committee of Management or of staff to be the **TMO LIAISON OFFICER** between the Council and the **TMO**. The **TMO LIAISON OFFICER** shall be the Council's first point of contact on day to day matters concerning the operation of this Agreement and the obligations of the **TMO** and the Council under this Agreement.
- 5.6 The **TMO** may by written notice to the Council change the **TMO LIAISON OFFICER**.

6 Liaison Meetings

6 *(Option A: where Council wishes to have separate meetings with the TMO).*

6 The Council shall convene a liaison meeting between the Council and the **TMO** not less than once every six months. Additional liaison meetings may be arranged by agreement between the Council and the **TMO**.

6 Liaison Meetings

6 *(Option B: where Council has more than one TMO and has joint liaison meetings).*

6.1 The Council shall establish a Joint **TMO Liaison Committee** (the "**Liaison Committee**"). The Council shall determine the terms of reference of the **Liaison Committee** which shall meet not less than twice each year.

6.2 The **TMO** may send the **LIAISON COMMITTEE REPRESENTATIVES** to each meeting of the **Liaison Committee**. The **TMO** shall determine the identity of the **LIAISON COMMITTEE REPRESENTATIVES** to attend each meeting.

6.3 The Council shall determine which elected councillors or officers shall represent the Council on the **Liaison Committee** (the "**Council's Representatives**").

6.4 The **Liaison Committee** shall submit to the Council for approval, which approval shall not be unreasonably withheld or delayed:

- a) standing orders governing the conduct of meetings of the **Liaison Committee**; and

- b) the arrangements necessary for convening, servicing and chairing meetings of the **Liaison Committee**.

6.5 The **TMO** shall also be entitled to meet independently with the **Council's Representatives** not less than once each year to review the operation of this Agreement.

7 **The Council's Nomination of Committee Members**

7 *(Option A: clause not included).*

7 **The Council's Nomination of Committee Members**

7 *(Option B: non voting nomination, committee run TMO).*

7.1 The **Council** may nominate:

- a) one person (or more if the **TMO** requests) to serve as a non voting member of the **TMO's** Management Committee;
- b) one person (or more if the **TMO** requests) to serve as a non voting member of any sub-committee of the **TMO**.

7.2 The Council shall ensure that any nominee shall act in the **TMO's** best interests and support and assist the **TMO** in fulfilling its obligations under this Agreement.

7.3 The **TMO** shall co-opt any person nominated by the Council under this clause to serve as a non voting member on the Committee of Management or sub-committee to which the person has been nominated.

7.4 Any nomination by the Council under this clause shall be in writing and shall state:

- a) the name and address of the person nominated; and
- b) the committee or sub-committee on which they are to serve.

7.5 Any person so nominated shall be entitled remain on the Committee or sub-committee for one year or such longer period as the **TMO** may agree and after that period may be renominated by the Council.

7.6 The **TMO** shall be entitled to remove any such person from the Committee or sub-committee if that person fails to attend at least 3 consecutive meetings in any one year or for any other reason for which a Committee member may be removed in accordance with its constitution.

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

7 The Council's Nomination of Committee Member

Option C: voting nomination, committee run TMO. This option can only be included if both the TMO and the Council agree and the Approved Person (as referred to in the Regulations) cannot recommend that it be included in the proposed agreement without the agreement of the TMO and the Council.

7.1 The Council may nominate:

- a) one person (or more if the **TMO** requests) to serve as a full voting member of the **TMO's** Committee of Management;
- b) one person (or more if the **TMO** requests) to serve as a full voting member of any sub-committee of the **TMO**.

7.2 The Council shall ensure that any nominee shall act in the **TMO's** best interests and to support and assist the **TMO** in fulfilling its obligations under this Agreement.

7.3 The **TMO** shall co-opt any person nominated by the Council under this clause to serve as a full voting member of the Committee of Management or sub-committee to which the person has been nominated.

7.4 Any nomination by the Council under this clause shall be in writing and shall state:

- a) the name and address of the person nominated; and
- b) the committee or sub-committee on which they are to serve; and
- c) the length of time (not exceeding 3 years without renomination) for which they are to serve as the Council's nominee.

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

7 The Council's Nominee

7 *(Option D: for general meeting run TMOs, non voting nomination).*

7.1 The Council may nominate one person (or more if the **TMO** requests) to attend and speak (but not to vote) at general meetings of the **TMO**.

- 7.2 The Council may also nominate one person to serve as a non voting member of each committee or sub-committee of the **TMO**.
- 7.3 The Council shall ensure that any nominee shall act in the **TMO's** best interests and support and assist the **TMO** in fulfilling its obligations under this Agreement.
- 7.4 Any nomination by the Council under this clause shall be in writing and shall 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.
- 7.5 Any person so nominated shall remain on the committee or sub-committee for one year or such longer period as the **TMO** may agree and after that period may be renominated by the Council.
- 7.6 The **TMO** may remove any such person from the committee or sub-committee if that person fails to attend at least 3 consecutive meetings in any one year or for any other reason for which a committee member may be removed in accordance with its constitution.

7 The Council's Nominee

*Option E: voting nomination, general meeting run TMOs. This option can only be included if both the TMO and the Council agree and the **Approved Person** (as referred to in the **Regulations**) cannot recommend that it be included in the proposed agreement without the agreement of the TMO and the Council.*

- 7.1 The Council may nominate one person (or more if the **TMO** requests) to attend, speak and vote at general meetings of the **TMO**.
- 7.2 The Council may also nominate one person (or more if the **TMO** requests) person to serve as a full voting member of each committee of the **TMO**.
- 7.3 The Council shall ensure that any nominee shall act in the **TMO's** best interests and support and assist the **TMO** in fulfilling its obligations under this Agreement.
- 7.4 Any nomination by the Council under this clause shall be in writing and shall 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 3 years without renomination) for which they are to serve as the Council's nominee.

8 Help to the TMO

8.1 The Council shall consider written requests made by the **TMO** for help in carrying out any of the obligations of the **TMO** under this Agreement. Requests for help may include requests for:

- a) the supply of building materials, tools and/or equipment;
- b) the provision of technical advice or services;
- c) carrying out emergency repairs; and/or
- d) assistance to fulfil the **TMO's** training obligations set out in clause 10 of chapter 1.

The Council shall not consider requests for help which would entail the secondment to the **TMO** of staff employed by the Council.

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

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

8.3 Where a request for help is agreed by the Council, the terms and conditions shall be confirmed in writing between the Council and the **TMO**.

9 Service of Notices

9 (*Option A: most cases*).

9.1 Any notice served by the Council or the **TMO** under the terms of the following clauses:

- a) Chapter 1 clause 19 (notices relating to the ending of this Agreement);
- b) Chapter 3 clause 2 (notices relating to rent arrears control);
- c) Chapter 6 clause 16 (notices relating to dispute or arbitration);

shall either be served by hand and signed for 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 to the **TMO'S REGISTERED OFFICE**.

9.2 All other written notices may be served by post and shall be considered to have been served 48 hours after posting. In the event of a dispute arising as to the service of a notice the burden of proof of posting shall rest with the sender.

9.3 Except for notices served under the terms of the clauses set out in clause 9.1, any notice or letter which the **TMO** sends to the Council under the terms of this Agreement shall be sent to the Council's Director of Housing or equivalent officer at the **COUNCIL'S OFFICES**.

9.4 Except for notices served under the terms of the clauses set out in clause 9.1, any notice or letter which the Council sends to the **TMO** under the terms of this Agreement shall be sent to the Secretary of the **TMO** at the **TMO'S REGISTERED OFFICE**.

9 Service of Notices

9 (Option B: use only if chapter 5, clause 13, option C is included).

9.1 Any notice served by the Council or the **TMO** under the terms of the following clauses:

- a) Chapter 1 clause 19 (notices relating to the ending of this Agreement);
- b) Chapter 3 clause 2 (notices relating to rent arrears control);
- c) Chapter 5 clause 14 (notices informing the Council that the **TMO** has obtained a possession order in respect of a dwelling occupied by a secure tenant claiming to exercise the **Right to Buy**); and
- d) Chapter 6 clause 16 (notices relating to dispute or arbitration);

shall either be served by hand and signed for by the Council's **LIAISON OFFICER** (or in the **LIAISON OFFICER'S** absence by a more senior officer) or sent by recorded delivery post to the **COUNCIL'S OFFICES** or the **TMO'S REGISTERED OFFICE**.

9.2 All other written notices may be served by post and shall be considered to have been served 48 hours after posting. In the event of a dispute arising as to the service of a notice the burden of proof of posting shall rest with the sender.

9.3 Except for notices served under the terms of the clauses set out in clause 9.1, any notice or letter which the **TMO** sends to the Council under the terms of this

Agreement shall be sent to the Council's Director of Housing or equivalent officer at the **COUNCIL'S OFFICES**.

- 9.4 Except for notices served under the terms of the clauses set out in clause 9.1, any notice or letter which the Council sends to the **TMO** under the terms of this Agreement shall be sent to the Secretary of the **TMO** at the **TMO's REGISTERED OFFICE**.

10 Duty to Pass on Notices

- 10.1 Unless the **TMO** has the responsibility for dealing with a notice or application under the terms of this Agreement, the **TMO** shall immediately pass on to the Council any notice or application concerning the **Property** served on the **TMO** by a tenant or any other person or organisation.
- 10.2 If the **TMO** has the responsibility for dealing with a notice or application under the terms of this Agreement, the Council shall immediately pass the notice or the application to the **TMO**.

11 Notification of Legal Proceedings.

- 11.1 The Council shall as soon as possible notify and keep the **TMO** informed of the progress of any legal proceedings which may affect the exercise of the **TMO's** responsibilities under this Agreement.
- 11.2 The **TMO** shall as soon as possible notify and keep the Council informed of the progress of any legal proceedings against the **TMO** which may affect the Council as owner of the **Property**.

12 Provision of Information

- 12.1 The **TMO** shall provide the Council with any information the Council may need in order to comply with the obligations imposed on the Council by law.
- 12.2 The Council shall provide the **TMO** with any information the **TMO** may reasonably request in order for the **TMO** to carry out its obligations under this Agreement.

13 Stock Transfers

- 13.1 The Council shall inform the **TMO** in writing as soon as possible if:
- a) the Council has reason to believe that any person or organisation has become or is considering applying to become an approved landlord to acquire the **Property** under the terms of Section 94 of the Housing Act 1988 (an "**Approved Landlord**"); or
 - b) the Council resolves to consult its tenants about the transfer of any dwellings which include dwellings within the **Property**; or
 - c) the Council receives any notice under Section 13 of the Leasehold Reform Housing and Urban Development Act 1993 (leasehold enfranchisement) that any person is claiming to exercise the **Right to Enfranchise**.
- 13.2 The Council shall keep the **TMO** fully informed of the progress of any of the matters listed at clause 13.1.
- 13.3 The **TMO** shall inform the Council in writing as soon as possible if:
- a) the **TMO** resolves to apply to become approved under section 94 of the Housing Act 1988; or
 - b) the **TMO** resolves to make an application under Section 13 of the Leasehold Reform Housing and Urban Development Act 1993 (leasehold enfranchisement) claiming to exercise the **Right to Enfranchise**.

14 Agent for Consultation

14 *(Option A: clause not included).*

14 Clause not included.

14 Agent for Consultation

14 *(Option B: TMO acts as agent for the Council on tenant consultation).*

- 14.1 The **TMO** shall act as agent for the Council in matters where the Council has a duty to consult secure tenants in the **Property** under Section 105 of the Housing Act 1985 or has a duty to or wishes to consult any other lawful occupants of the **Property**.
- 14.2 If the Council, on any particular occasion, wishes to consult secure tenants or other lawful occupants directly, the Council shall request the **TMO's** consent, which consent shall not be unreasonably withheld or delayed.

- 14.3 If the Council wishes the **TMO** to consult on a particular matter the Council shall send to the **TMO** a written request which:
- a) informs the **TMO** of the matter or matters on which the Council wishes to consult; and
 - b) states the minimum length of the consultation period and the date by which the **TMO** should complete the consultation.
- 14.4 The Council shall also provide the **TMO** with such additional information or assistance as the **TMO** may require in order to consult secure tenants or other occupants of the **Property**.
- 14.5 The **TMO** shall as soon as possible after receiving a request either:
- a) consult secure tenants or other occupants of the **Property** by taking such action as may be necessary to comply with the Council's request; or
 - b) within 28 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.
- 14.6 The Council shall meet any extra costs not allowed for in the **ALLOWANCES** and reasonably incurred by the **TMO** in fulfilling its obligations under this clause.

15 General Indemnities

- 15.1 The **TMO** shall indemnify the Council against any loss or damage which the Council may suffer as a result of the omission or failure of the **TMO**, its duly authorised employees or duly authorised agents to fulfil the **TMO's** obligations under this Agreement.
- 15.2 Subject to the limitation on the indemnity in clause 1 above in respect of the transfer of employees, the Council shall indemnify the **TMO** against any loss or damage which the **TMO** may suffer as a result of the omission or failure of the Council its duly authorised employees or duly authorised agents to fulfil the Council's obligations under this Agreement.

16 Disputes and Arbitration

- 16 *(Option A: for TMOs with a Committee of Management).*

- 16.1 If a dispute between the Council and the **TMO** arises out of the operation of this Agreement, whether or not the right to refer the matter to the dispute process in this clause is specifically referred to, the Council or the **TMO** may serve on the other a notice of dispute (a "**Notice of Dispute**") which states the nature of the dispute and the action the aggrieved party wishes the other to take in order to resolve it.
- 16.2 If a **Notice of Dispute** is served on the **TMO** by the Council, the **TMO** shall within 14 days of receipt consider the dispute at a Management Committee meeting. The **TMO** shall within 7 days of the Management Committee meeting inform the Council in writing of the **TMO's** response and the action (if any) the **TMO** intends to take to resolve the dispute.
- 16.3 If the Council is not satisfied with the **TMO's** response to the **Notice of Dispute**, the Council may in writing request the **TMO** to convene a Special General Meeting to consider the dispute, which meeting shall be held within a period of 7 days plus the notice period the **TMO** is required to give for a Special General Meeting beginning on the date of the **TMO** receiving the Council's request. The **TMO** shall within 7 days of the Special General Meeting inform the Council of its final response to the Council and the action (if any) the **TMO** intends to take to resolve the dispute.
- 16.4 If a **Notice of Dispute** is served on the Council by the **TMO**, the Council's Director of Housing or equivalent shall within 14 days of receipt consider the dispute. The Council shall within 21 days of receipt inform the **TMO** in writing of their response and the action (if any) the Council intends to take to resolve the dispute.
- 16.5 If the **TMO** is not satisfied with the Council's response to the **Notice of Dispute**, the **TMO** may in writing request the Council to consider the dispute at the next meeting of the Council's Housing Committee. The Council's Housing Committee shall consider the dispute and shall within 7 days of the meeting inform the **TMO** in writing of the Council's final response and the action (if any) the Council intends to take to resolve the dispute.
- 16.6 If after the above disputes procedure has been followed the dispute remains unresolved, the Council or the **TMO** may by written notice to the other refer the dispute to arbitration under the Arbitration Acts 1950 to 1979. The arbitrator to be appointed shall be selected from a panel approved by the Secretary of State for the purpose of acting as an arbitrator in connection with the **Regulations** and shall be agreed in writing between the **TMO** and the Council. If the **TMO** and the Council cannot agree the appointment of an arbitrator within 21 days of either party referring the dispute to arbitration the Council or the **TMO** may request the appointment of an arbitrator using the procedure at Appendix 2. The decision of the arbitrator shall be binding on the **TMO** and the Council.
- 16.7 Nothing in this clause shall limit the right of the Council or the **TMO** to pursue other lawful remedies, including ending this Agreement (see chapter 1 clause 19),

in the event of the Council or the **TMO** failing to fulfil their respective obligations under this Agreement.

16 Disputes and Arbitration

16 *(Option B: for general meeting run TMOs).*

- 16.1 If a dispute between the Council and the **TMO** arises out of the operation of this Agreement, whether or not the right to refer the matter to the dispute process in this clause is specifically referred to, the Council or the **TMO** may serve on the other a notice of dispute (a "**Notice of Dispute**") which states the nature of the dispute and the action the aggrieved party wishes the other to take in order to resolve it.
- 16.2 If a **Notice of Dispute** is served on the **TMO** by the Council, the **TMO** shall within 21 days of receipt consider the dispute at a General Meeting of the **TMO**. The **TMO** shall within 7 days of the General Meeting inform the Council in writing of the **TMO**'s response and the action (if any) the **TMO** intends to take to resolve the dispute.
- 16.3 If the Council is not satisfied with the **TMO**'s response to the **Notice of Dispute**, the Council may in writing request the **TMO** to convene a Special General Meeting to consider the dispute, which meeting shall be held within a period of 7 days plus the notice period the **TMO** is required to give for a Special General Meeting beginning on the date of the **TMO** receiving the Council's request. The **TMO** shall within 7 days of the Special General Meeting inform the Council of its final response to the Council and the action (if any) the **TMO** intends to take to resolve the dispute.
- 16.4 If a **Notice of Dispute** is served on the Council by the **TMO** the Council's Director of Housing or equivalent shall within 14 days of receipt consider the dispute. The Council shall within 21 days of receiving the notice inform the **TMO** in writing of their response to the **TMO**'s grievance and the action (if any) the Council intends to take to resolve the dispute.
- 16.5 If the **TMO** is not satisfied with the Council's response to the **Notice of Dispute**, the **TMO** may in writing request the Council to consider the dispute at the next meeting of the Council's Housing Committee. The Council's Housing Committee shall consider the dispute and shall within 7 days of the meeting inform the **TMO** in writing of the Council's final response and the action (if any) the Council intends to take to resolve the dispute.
- 16.6 If after the above disputes procedure has been followed the dispute remains unresolved, the Council or the **TMO** may by written notice to the other refer the dispute to arbitration under the Arbitration Acts 1950 to 1979. The arbitrator to be appointed shall be selected from a panel approved by the Secretary of State for the purpose of acting as an arbitrator in connection with the **Regulations** and shall be agreed in writing between the **TMO** and the Council. If the **TMO** and the Council

cannot agree the appointment of an arbitrator within 21 days of referring the dispute to arbitration, the Council or the **TMO** may request the appointment of an arbitrator using the procedure at Appendix 2. The decision of the arbitrator shall be binding on the **TMO** and the Council.

- 16.7 Nothing in this clause shall limit the right of the Council or the **TMO** to pursue other lawful remedies including ending this Agreement (see chapter 1 clause 19) in the event of the Council or the **TMO** failing to fulfil their respective obligations under this Agreement.

17 Information to the Secretary of State

- 17.1 The **TMO** shall provide the Secretary of State for the Environment, each year in the form requested and by the date required by the Secretary of State, the following information:

- a) a copy of the annual accounts of the **TMO** or a copy of the **Financial Report**;
- b) a copy of the **TMO's** Annual Report (if any);
- c) details of changes in the number of units managed in the **Property** (including changes arising from the **Right to Buy** and other sales);
- d) details of any variation to this Agreement made under clause 17 of chapter 1;
- e) details of any change to the **Tenancy Agreement**;
- f) details of any change in the address of the **TMO's REGISTERED OFFICE**; and
- g) any other information the Secretary of State may require.

- 17.2 The **TMO** shall give the Council a copy of the information provided each year to the Secretary of State at the same time as it sends the information to the Secretary of State.

- 17.3 The Council shall provide the Secretary of State for the Environment with any information the Secretary of State may require about the **TMO** or the working of this Agreement.

CHAPTER 6

APPENDIX 1

Staff transferring from the Council to the **TMO** in accordance with Clause 1 Option B together with details of their terms and conditions

APPENDIX 2

Arbitration procedure

THE CHARTERED INSTITUTE OF ARBITRATORS

ARBITRATION PROCEDURE FOR LOCAL HOUSING

AUTHORITIES AND TENANT MANAGEMENT ORGANISATIONS

RULES (1994 edition)

Preliminary

1. These Rules, which have been approved by the Department of the Environment ('the Department'), shall apply to disputes between a Local Housing Authority ('the Authority') and a Tenant Management Organisation ('the Organisation') arising under either:
 - (i) the Housing (Right to Manage) Regulations 1994; or
 - (ii) an agreement entered into pursuant to Regulation 4(14) or regulation 11 of those Regulations.
2. Arbitrations under these Rules may be conducted:
 - (i) using written submissions and documentary evidence only without a hearing; or
 - (ii) with both written submission and an oral hearing.

The special costs provisions of this scheme (see Rule 19) only apply to arbitrations of type (i), conducted without a hearing.
3. The parties may vary any of the provisions of these Rules by agreement.

Commencement of Arbitration

4. An application for arbitration shall be made to the Chartered Institute of Arbitrators ('the Institute') on the attached form and shall be accompanied by the registration fee which is specified on the form and is payable by both parties. When the Institute is satisfied that an application has been validly made, it shall appoint the arbitrator agreed by the parties, or, if the parties have not agreed the identity of the arbitrator within the period for making a reference under the Regulations, or, where a reference is made under the terms of a management agreement, within 21 days of the making of the reference, it shall, where a reference is made under the Regulations, make

recommendations to the Secretary of State who shall appoint an arbitrator, or, where a reference is made under the terms of a management agreement, itself appoint an arbitrator, selected from a panel approved by the Secretary of State for the purpose of acting as an arbitrator in connection with the Housing (Right to Manage) Regulations 1994.

Jurisdiction and Powers of the Arbitrator

5. The Arbitrator shall have the widest discretion permitted by law to ensure the just, expeditious, economical and final determination of the dispute. In particular, she/he may exercise the powers set out in the Schedule to these Rules.

Procedure

6. The parties shall, if possible, agree whether the arbitration is to proceed:
 - (i) in accordance with Rules 2(i) on the basis of written submissions and documentary evidence only, without a hearing; or
 - (ii) in accordance with Rules 2(ii) with a hearing for the purpose of receiving oral submissions and evidence.

If the parties fail to agree, the Arbitrator shall decide which procedure is to be followed and may, if she/he considers it desirable, call a meeting with the parties to consider the matter. Whenever it is suitable, the arbitrator shall direct that the procedure shall be in accordance with Rule 2(i). Only in exceptional circumstances shall the arbitrator direct that the procedure shall be in accordance with Rules 2(ii). The Arbitrator shall in any case confirm which procedure is to be followed by directions issued to the parties in writing.

7. Within 7 days of the Arbitrator's directions under Rule 6, the party making the claim ('the Claimant') shall submit to the Arbitrator and to the other party ('the Respondent') a brief statement of claim.
8. Within 21 days of receipt of the Claimant's statement of its claim, the Respondent shall submit to the Arbitrator and to the Claimant a brief statement of its response to the claim.
9. Within 14 days of receipt of the Respondent's response, the Claimant shall submit to the Arbitrator and to the Respondent a brief statement of any comments which it wishes to make upon the response.
10. All statements submitted under Rules 7 to 9 above shall include a brief statement of:

10.1 The party's principal arguments of fact and law;

10.2 In the case of the claim, the remedies sought;

and shall be accompanied by copies of all documents on which the party seeks to rely in support of its case.

11. Submissions will normally be closed on completion of the procedure set out in Rules 7 - 10. However, the Arbitrator may, in his/her discretion, permit the parties to make further replies to each other's cases.
12. The Arbitrator may require the parties to submit to her/him and to each other documents or information as he/she considers to be relevant and/or necessary.
13. Within 14 days of the close of submissions or at such other time as he thinks fit, the Arbitrator may in appropriate cases conduct an inspection of any location or premises which will assist her/him in determining the issues before him/her. The parties shall be entitled to attend, but only for the purpose of identifying for the Arbitrator the location of any evidence.
14. Where, under Rule 6, the Arbitrator has directed that a hearing be held, he shall, in consultation with the parties, fix a date and venue for the hearing and an appropriate procedure for it at the earliest opportunity.
15. Where, under Rule 6, the Arbitrator has directed that the arbitration is to proceed on the basis of written submissions and documentary evidence only, she/he may nevertheless call the parties to an informal hearing solely for the purpose of seeking clarification of any matters arising from the parties' statements and supporting evidence. The special costs provision will continue to apply in such a case.
16. If, during the course of the arbitration, the Arbitrator concludes that the dispute is incapable of proper resolution in accordance with these Rules, or if, having directed otherwise under Rule 6, he/she considers that a full formal hearing is after all required, he shall advise the parties of his alternative proposals for the conduct of the arbitration. The arbitration shall continue from the point already reached and the Arbitrator shall have power to make directions as to the conduct of the hearing and representation of the parties.
17. The parties may, by agreement at any time, serve notice on the Arbitrator that the arbitration shall no longer be conducted in accordance with these Rules.
18. The Arbitrator shall have the power to extend any of the time limits stipulated in these Rules.

Costs

19. In the case where the parties agree or the arbitrator determines in accordance with Rule 6 that the arbitration is to proceed on the basis of written submissions and documentary evidence only (without a hearing), the arbitrator's fee shall be €400 plus VAT to be borne by the parties in such proportions as the arbitrator may determine.
20. Where:
- (i) the parties do not agree to proceed on the basis of written submissions and documentary evidence only (without a hearing); and
 - (ii) where the arbitrator does not so determine in accordance with Rule 6;
- then the €400 + VAT fee referred to in Rule 19 shall not be applicable unless the arbitrator so directs. The arbitrator's scale of fees in such a case will be agreed between the Arbitrator and the Parties, provided that if no agreement is reached within a reasonable period determined by the Arbitrator, the Arbitrator shall be entitled to charge a reasonable fee.
21. The arbitrator shall have a discretion to order one party to reimburse the other party's registration fee to that party.
22. Each party shall bear its own costs of preparing and submitting its case to arbitration, including legal and other professional costs. Neither party may seek to recover these costs by way of court action.

Miscellaneous

23. The Secretary of State reserves the right to appoint a substitute arbitrator if the original appointee dies, or is prevented by incapacity or any other reason from dealing expeditiously with the dispute.
24. Awards made under these Rules shall be final and binding on the parties.
25. Neither the Institute nor the arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules, save that the Arbitrator (but not the Institute) shall be liable for any wrongdoing on his own part arising from bad faith.
26. The fee of €400 plus VAT referred to in Rule 19 may be varied from time to time by agreement between the Chartered Institute of Arbitrators and the Department.

SCHEDULE

JURISDICTION AND POWERS OF THE ARBITRATOR

Jurisdiction

1. Where the parties have entered into an agreement referred to in Rule 1(ii) or have purportedly done so, the Arbitrator may determine any question as to its interpretation, existence, validity or termination; she/he may in such a case also order the rectification of the Agreement, but only to the extent required to rectify any manifest error, mistake or omission which he determines to be common to both parties;
2. He/she may determine any question of law arising in the arbitration;
3. She/he may determine any question of good faith, dishonesty or fraud arising in the dispute, if specifically pleaded by a party.

Powers

4. The Arbitrator shall, without prejudice to any powers conferred by these Rules, have power to:
 - (a) allow any party, upon such terms (as to costs and otherwise) as he/she shall determine, to amend any statement of claim, response, comments to the response, or any other submissions;
 - (b) order the parties to produce relevant information or documents for inspection, in their presence, by the Arbitrator;
 - (c) order any party to produce to the Arbitrator and to the other party, a list of relevant documents for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power which the arbitrator determines to be relevant;
 - (d) allow, limit or refuse to allow the appearance of witnesses, whether witnesses of fact or expert witnesses;
 - (e) require, prior to any hearing, the exchange of witnesses' statements and of expert's reports;
 - (f) seek legal advice in such form as she/he thinks fit;
 - (g) proceed in the arbitration notwithstanding with failure or refusal of any party to comply with these Rules or with his orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that he intends to do so;

- (h) issue an order for termination of the reference to arbitration if the parties agreed to settle the dispute before an award is made or, if required by both parties, record the settlement in the form of a consent award.
5. If the parties agree, following an explanation by the Arbitrator of the consequences, the Arbitrator may exercise the following additional powers;
- (a) to conduct such enquiries as may appear to him/her to be necessary or desirable;
 - (b) to receive oral or written evidence from any party which she/he considers relevant, whether or not strictly admissible in law. In particular the Arbitrator may, at his/her discretion, receive secondary evidence and/or draw appropriate inferences from a party's conduct where that party fails to comply with an order made by the Arbitrator.

Chartered Institute of Arbitrators
International Arbitration Centre
24 Angel Gate
City Road
London EC1V 2RS

Tel 071-837 4483
Fax 071-837 4184

March 1994

FORM

APPLICATION FOR ARBITRATION

Registration No:

FIRST PARTY

Name
Address

Tel. No.

Solicitors/Advisors:
Name
Address

Tel. No.

SECOND PARTY

Name
Address

Tel. No.

Solicitors/Advisors:
Name
Address

Tel. No.

DISPUTE:

(Brief particulars of nature, circumstances and location of dispute, issue for arbitration and amount at issue are all that are required at this stage. The parties will be asked to make detailed submissions in due course.)

THE CHARTERED INSTITUTE OF ARBITRATORS
ARBITRATION PROCEDURE FOR LOCAL HOUSING AUTHORITIES
AND TENANT MANAGEMENT ORGANISATIONS
APPLICATION FOR ARBITRATION

1. Claimants
of Tel:

hereby apply to the Chartered Institute of Arbitrators for the dispute described in the Appendix to be referred to arbitration under the Arbitration Procedure for Local Housing Authorities and Tenant Management Organisations for the time being in force referred to in the Guidance issued by the Secretary of State under Regulation 7 of the Housing (Right to Manage) Regulations 1994 for determination by an arbitrator appointed for that purpose by the Secretary of State.

2. We, the Claimants to the application, are in possession of a copy of the Rules of the Procedure and have supplied a copy of the Rules to the Respondent, together with a copy of this application. We agree to be bound by these Rules and by the award of the Arbitrator appointed to determine the dispute.

3. A cheque for £58.75 inclusive of VAT (payable to the Chartered Institute of Arbitrators) in respect of the Institute's registration/appointment fee is enclosed.

SIGNED:
..... Date

(for Claimant)

Note: the Respondent is required under Rule 4, on receipt of this application form, to submit its registration fee of £58.75 inclusive of VAT to the Chartered Institute of Arbitrators at the address below.

The Chartered Institute of Arbitrators

International Arbitration Centre
24 Angel Gate, City Road
London, EC1V 2RS

Telephone : 071-837 4483
Facsimile : 071-837 4185

ANNEX A

The recruitment policy, disciplinary procedure and standard terms and conditions for the **TMO Staff**.

CHAPTER 7

MONITORING AND PERFORMANCE STANDARDS

1 The TMO's Performance Standards

- 1.1 In carrying out its duties under this Agreement the **TMO** shall comply with the performance standards set out in the appendices to the chapters of this Agreement.
- 1.2 To ensure that the **TMO** complies with the obligation to carry out its duties in accordance with the policies procedures and performance standards set out in the appendices to this Agreement the **TMO** shall establish performance indicators which enable the **TMO** to measure its performance against the standards it is required to achieve (the "**TMO's Key Performance Indicators**").
- 1.3 The **TMO's Key Performance Indicators** shall:
- a) be set in consultation with the Council, the **TMO** taking due and proper account of the Council's views of the performance targets which are reasonable in view of the length of time the **TMO** has managed the **Property** under this agreement and any local circumstances which may affect performance;
 - b) broadly reflect the targets set by the Council for the management and maintenance of the comparator area listed in Annex A to this chapter which is under the Council's direct management or managed by another organisation; and
 - c) be reviewed annually at the Annual Review Meeting held under clause 4 below.
- 1.4 The **TMO** shall, in writing, inform the Council of the **TMO's Key Performance Indicators** it has established:
- a) first, on the **STARTING DATE** of this Agreement; and
 - b) subsequently within one month of each Annual Review Meeting held under clause 4 below.

2 The Council's Performance Standards

- 2.1 In carrying out its retained responsibilities in respect of the **Property** under this Agreement, the Council shall comply with the performance standards which apply to the Council's retained responsibilities set out in the appendices to the chapters of this Agreement.

- 2.2 To demonstrate that the Council is complying with the performance standards for its retained responsibilities in respect of the **Property** set out in appendices to this Agreement the Council shall establish performance indicators which enable the Council to measure its performance against the standards it is required to achieve in the key areas of its retained responsibilities (the "**Council's Key Performance Indicators**").
- 2.3 The Council shall, in writing, inform the **TMO** of the **Council's Key Performance Indicators**:
- a) firstly, on the **STARTING DATE** of this Agreement; and
 - b) subsequently within one month of each Annual Review Meeting held under clause 4 below.

3 Publication of Key Performance Indicators

*3 (Option A: the **TMO** and the Council have an obligation each year to publish key performance indicators).*

- 3.1 Within 3 months of the end of the **Financial Year**:
- a) the **TMO** shall publish a performance report (the "**TMO's Performance Report**") showing the **TMO's** actual performance during the previous **Financial Year** in comparison with the **TMO's Key Performance Indicators** save that, with the written consent of the Council which shall not be unreasonably withheld or delayed, any indicator which may reveal confidential information about a tenant or employee shall not be published; and
 - b) the Council shall publish a performance report in respect of the **Property** (the "**Council's Performance Report**") showing the Council's actual performance during the previous **Financial Year** (which shall include the performance of contractors employed by the Council) in comparison with the **Council's Key Performance Indicators** save that any indicator which may reveal confidential information about a tenant or employee shall not be published.
- 3.2 As soon as may be practicable after publication of the **TMO's Performance Report**, the **TMO** shall send a copy of the **TMO's Performance Report** to the Secretary of State, the Council and to every tenant, leaseholder and freeholder in the **Property**. The **TMO** shall also provide a copy to any resident in the borough or district on payment of a fee equal to the cost to the **TMO** of copying the **TMO's Performance Report**.

- 3.3 As soon as may be practicable after publication of the **Council's Performance Report**, the Council shall send a copy of the **Council's Performance Report** to the **TMO** and to every tenant, leaseholder and freeholder in the **Property**.

3 Publication of Key Performance Indicators

- 3 *(Option B: the **TMO** has delegated responsibility to publish performance information which fulfils the Council's responsibilities to publish performance statistics under section 167 of the Local Government and Housing Act 1989. Note: this option is only appropriate for a borough or district wide **TMO** which manages all the rented properties owned by the Council and has full responsibility under the highest level options of this Agreement).*

- 3.1 Within 3 months of the end of the **Financial Year**, the **TMO** shall publish a performance report (the "**TMO's Performance Report**") showing the **TMO's** actual performance during the previous **Financial Year** in comparison with the **TMO's Key Performance Indicators**. The **TMO's Performance Report** shall be in such form as is necessary to comply with the Council's duty under the provisions of Section 167 of the Local Government and Housing Act 1989 to publish performance information about the management of its housing stock.

- 3.2 As soon as may be practicable after publication of the **TMO's Performance Report** the **TMO** shall send a copy of the **TMO's Performance Report** to the Secretary of State, the Council and to every tenant, leaseholder and freeholder in the **Property**. The **TMO** shall also, free of charge, provide a copy of the **Performance Report** to any resident in the Council's borough or district who requests one.

4 Annual Review

- 4 *(Option A: mutual review of performance). [Link to clause 3, option A].*

- 4.1 During the 3 months following of the publication of the **TMO's Performance Report** and the **Council's Performance Report** each year, the Council and the **TMO** shall meet to review their respective performance during the previous year and the action needed to rectify deficiencies in the **TMO's** or the Council's performance. The meeting shall be convened by the Council and be held either at the **COUNCIL'S OFFICES** or the **TMO's REGISTERED OFFICE** at a time agreed by the **TMO** and the Council, or failing agreement on any weekday evening (other than a Friday) determined by the Council.

- 4.2 If either the **Council's Performance Report** or the **TMO's Performance Report** identifies deficiencies in performance, the Council or the **TMO** respectively shall, at the annual review meeting held under the terms of this clause, put forward a strategy to rectify its failure to perform and to maintain the required standard of performance in the future. If the **TMO** is required to present a strategy under this clause the strategy shall, if the Council so requires, include an obligation that the **TMO** shall provide the Council with quarterly reports of its performance against

the performance indicators the **TMO** has established in respect of those aspects of its performance where the **TMO's Performance Report** shows that the **TMO's** performance is deficient. Nothing in this clause prevents the Council or the **TMO** taking action for breach of this Agreement in respect of deficiencies in performance (see chapter 1, clause 18).

4 Annual Review

4 *(Option B: review of the TMO's performance). [Link to clause 3, option B].*

4.1 During the 3 months following of the publication of the **TMO's Performance Report** each year, the Council and the **TMO** shall meet to review the **TMO's** performance during the previous year and the action needed to rectify deficiencies in the **TMO's** performance. The meeting shall be convened by the Council and be held either at the **COUNCIL'S OFFICES** or the **TMO's REGISTERED OFFICE** at a time agreed by the **TMO** and the Council or failing agreement on a weekday evening (other than a Friday) determined by the Council.

4.2 If the **TMO's Performance Report** identifies deficiencies in the performance of the **TMO** the **TMO** shall, at the Annual review meeting held under the terms of this clause, put forward a strategy to rectify its failure to perform and to maintain the required standard of performance in the future. The strategy shall, if the Council so requires, include an obligation that the **TMO** shall provide the Council with quarterly reports of its performance, against the performance indicators the **TMO** has established in respect of those aspects of its performance where the **TMO's Performance Report** shows that the **TMO's** performance is deficient. Nothing in this clause prevents the Council taking action for breach of this Agreement in respect of deficiencies in performance (see chapter 1, clause 18).

5 Monitoring

5.1 Each year the Council shall monitor the effectiveness of the **TMO's Equal Opportunities Policy and Procedures** and report to the **TMO** on its findings. The **TMO** shall consider the Council's report on the effectiveness of the **Equal Opportunities Policy and Procedures** and make such changes as the Council may reasonably require to ensure that the **TMO** complies with its commitment to implementing its **Equal Opportunities Policy and Procedures** (see chapter 1, clause 9).

5.2 Not less frequently than once every five years or more frequently than once every two years (unless the Council has reason to believe that the **TMO** is failing to fulfil its responsibilities under this Agreement), the Council shall monitor the total performance of the **TMO** in fulfilling its responsibilities under this Agreement. In monitoring the **TMO's** performance the Council shall pay particular attention to:

- a) the democratic standards of control and the compliance with the **TMO's** rules or memorandum and articles of association;

- b) the standards of implementation of the **Equal Opportunities Policy and Procedures** (see chapter 1, clause 9);
- c) the general efficiency of the **TMO's** administration and the use of the **TMO's Key Performance Indicators** to demonstrate the achievement of (or failure to achieve) the performance standards required by this Agreement (see clause 1 above);
- d) the **TMO's** standards of financial control and its financial viability (see chapter 4); and
- e) the selection of tenants and the implementation of fair housing policies and good tenancy management (see chapter 5);

5.3 The **TMO** shall provide such information and access to records as the Council may reasonably need to monitor the **TMO's** performance.

5.4 The Council shall make such arrangements as it sees fit to fulfil its obligations under this clause. The Council shall also ensure that in carrying out its duty to monitor the **TMO** its monitoring arrangements are not so onerous as to prevent the **TMO** fulfilling its duties under this Agreement.

5.5 As soon as may be practicable after completing a monitoring exercise under the terms of this clause, the Council shall produce a monitoring report in such form as the Council deems appropriate (the "**Monitoring Report**"). The **Monitoring Report** shall, as well as identifying deficiencies (if any) in the working or performance of the **TMO**, also make positive recommendations as to the action and practical steps which in the Council's opinion the **TMO** needs to take to rectify any deficiencies the Council has found and the timescale(s) within which the Council considers that remedial action should be taken. The Council shall provide the **TMO** with a copy of the **Monitoring Report** as soon as it is available.

5.6 Within 2 months of receipt of the **Monitoring Report** the **TMO** shall respond in writing to the **Monitoring Report** which response shall:

- a) in respect of the recommendations for action in the **Monitoring Report** which the **TMO** accepts, set out the **TMO's** plan and timescale for implementing those recommendations;
- b) in respect of the findings and recommendations (if any) with which the **TMO** disagrees, set out:
 - i) the specific areas of disagreement, and
 - ii) the reasons why the **TMO** disagrees with the Council's findings, and

iii) evidence which shows that the Council has reached incorrect conclusions.

5.7 If the **TMO** disagrees with the **Monitoring Report** and responds to the **Monitoring Report** under clause 5.6 b) above, the Council shall, within 1 month of receiving the **TMO's** response give reasoned consideration to the **TMO's** response and, in writing, either:

- a) accept the **TMO's** response and modify the findings and recommendations for action in the **Monitoring Report**; or
- b) give reasons why the **TMO's** response is not accepted by the Council and require the **TMO**, within 1 month and in writing, to submit its plan for implementing the recommendations for action in the **Monitoring Report**.

5.8 If, the Council having under clause 5.7 b) above given reasons why it requires the recommendations in the **Monitoring Report** to be implemented, a disagreement remains between the Council and the **TMO** as a result of monitoring carried out under this clause, the disagreement shall be settled by using the procedure for settling disputes in clause 16 of chapter 6.

6 **Complaints about the TMO's or Council's Performance as Manager of the Property**

6 *(Option A: the TMO passes complaints on to the Council to be investigated).*

6.1 The Council shall retain responsibility for investigating complaints about the standards of management and maintenance of the **Property**.

6.2 If a tenant leaseholder or freeholder in the **Property** makes a complaint to the **TMO** about the standard of performance of the **TMO** or the Council in managing the **Property** (a "**Management Complaint**"), the **TMO** shall pass the **Management Complaint** on to the Council within 7 days of receipt.

6.3 On receipt of a **Management Complaint**, either directly or via the **TMO**, the Council shall investigate the **Management Complaint** in accordance with the policy and procedure for investigating a **Management Complaint** set out in Appendix 1 to this chapter (the "**Management Complaints Policy and Procedure**").

6.4 If the Council, having considered a **Management Complaint** in accordance with the **Management Complaints Policy and Procedure**, concludes that a complaint is justified, the Council shall within 28 days of receiving the **Management Complaint**:

- a) if the **Management Complaint** is about the standard of service provided by the Council in respect of the management or maintenance responsibilities retained by the Council:
 - i) take appropriate action to rectify the deficiency in the Council's performance which gave rise to the **Management Complaint**, and
 - ii) in writing, notify the person who made the **Management Complaint** of the Council's conclusions and the action the Council will take to remedy the deficiency in its performance;

or,

- b) if the **Management Complaint** is about the standard of service provided by the **TMO**:
 - i) in writing, notify the **TMO** that the Council considers the **Management Complaint** justified and the action the Council considers the **TMO** should take to rectify the deficiency in the **TMO's** performance, and
 - ii) in writing, notify the person who made the **Management Complaint** of the Council's conclusions and the action the Council expects the **TMO** to take to remedy the deficiency in its performance.

6.5 If the Council having considered a **Management Complaint** in accordance with the **Management Complaints Policy and Procedure**, concludes that a complaint is not justified the Council shall, within 28 days of receiving the **Management Complaint**, notify the person who made the complaint of the Council's conclusions and the reasons for them.

6.6 If the **TMO** considers that the conclusions the Council has reached about a **Management Complaint** made about the **TMO's** performance are incorrect the **TMO** may, within 14 days of receiving the Council's notification of its decision under clause 6.4 b) above, appeal to the Council to reconsider its conclusions. The appeal shall be in writing and shall state the reasons why the **TMO** considers the Council's conclusions not to be justified. On receipt of an appeal under this clause the Council shall reconsider its conclusions and, within 14 days of receiving the appeal, give to the **TMO** a reasoned written response to its appeal. If the Council considers that its original conclusions about the **Management Complaint** were incorrect the Council shall, in writing, notify the person who made the **Management Complaint** of the appeal the **TMO** has made and the revised conclusions the Council has reached about the **Management Complaint**.

6.7 Subject to the right of the **TMO**, having failed in its appeal under clause 6.6 above, to refer the outcome of a **Management Complaint** to dispute (see chapter 6, clause 16), the **TMO** shall take such action as the Council may reasonably require to remedy the cause for a **Management Complaint**.

6.8 If a **Management Complaint** is made to the Local Authority Ombudsman about the performance of the **TMO** as manager of the **Property** the **TMO** shall provide the Council with the assistance and information the Council may reasonably require in dealing with the Local Authority Ombudsman's investigations.

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

6 *(Option B: the TMO deals with complaints which relate to its responsibilities, the Council deals with complaints which relates to its retained responsibilities).*

6.1 If a tenant leaseholder or freeholder in the **Property** makes a complaint about the standards of performance of the **TMO** or the Council in managing the **Property** (a "**Management Complaint**") either:

a) if the **Management Complaint** is received by the **TMO** and relates to the Council's retained responsibilities the **TMO** shall pass the **Management Complaint** on to the Council within 7 days of receipt;

or

b) if the **Management Complaint** is received by the Council and relates to the responsibilities delegated to the **TMO** under the terms of this Agreement the Council shall pass the **Management Complaint** on to the **TMO** within 7 days of receipt.

6.2 On receipt of a **Management Complaint**, either directly or via the **TMO**, the Council shall investigate the **Management Complaint** in accordance with the policy and procedure for investigating a **Management Complaint** set out in Appendix 1 to this chapter (the "**Management Complaints Policy and Procedure**").

6.3 If the Council, having considered a **Management Complaint** about its performance in accordance with the **Management Complaints Policy and Procedure**, concludes that a complaint is justified, the Council shall within 28 days of receiving the **Management Complaint**:

i) take appropriate action to rectify the deficiency in the Council's performance which gave rise to the **Management Complaint**, and

ii) in writing, notify the person who made the **Management Complaint** and the **TMO** of the Council's conclusions and the action the Council will take to remedy the deficiency in its performance.

6.4 If the Council having considered a **Management Complaint** about its performance in accordance with the **Management Complaints Policy and Procedure**, concludes that a complaint is not justified the Council shall, within 28 days of

receiving the **Management Complaint**, notify the person who made the complaint and the **TMO** of the Council's conclusions and the reasons for them.

6.5 On receipt of a **Management Complaint**, either directly or via the Council, the **TMO** shall investigate the **Management Complaint** in accordance with the policy and procedure for investigating a **Management Complaint** set out in Appendix 1 to this chapter (the "**Management Complaints Policy and Procedure**").

6.6 If the **TMO**, having considered a **Management Complaint** about its performance in accordance with the **Management Complaints Policy and Procedure**, concludes that a complaint is justified the **TMO** shall within 28 days of receiving the **Management Complaint**:

- i) take appropriate action to rectify the deficiency in the **TMO's** performance which gave rise to the **Management Complaint**, and
- ii) in writing, notify the person who made the **Management Complaint** and the **Council** of the **TMO's** conclusions and the action the **TMO** will take to remedy the deficiency in its performance.

6.7 If the **TMO**, having considered a **Management Complaint** about its performance in accordance with the **Management Complaints Policy and Procedure**, concludes that a complaint is not justified the **TMO** shall, within 28 days of receiving the **Management Complaint**, notify the person who made the complaint and the Council of the **TMO's** conclusions and the reasons for them.

6.8 If a **Management Complaint** is made to the Local Authority Ombudsman about the performance of the **TMO** as manager of the **Property**, the **TMO** shall provide the Council with the assistance and information the Council may reasonably require in dealing with the Local Authority Ombudsman's investigations.

6 **Complaints about the TMO's or Council's Performance as Manager of the Property**

6 *(Option C: the **TMO** has delegated responsibility for dealing with complaints. The **TMO** reports annually to the Council on the complaints received and the action taken to rectify genuine causes for complaint).*

6.1 The **TMO** shall investigate complaints about the standards of management and maintenance of the **Property**.

6.2 If a tenant leaseholder or freeholder in the **Property** makes a complaint to the Council about the standard of performance of the **TMO** or the Council in managing the **Property** (a "**Management Complaint**"), the Council shall pass the **Management Complaint** on to the **TMO** within 7 days of receipt.

- 6.3 On receipt of a **Management Complaint**, either directly or via the Council, the **TMO** shall investigate the **Management Complaint** in accordance with the policy and procedure for investigating a **Management Complaint** set out in Appendix 1 to this chapter (the "**Management Complaints Policy and Procedure**").
- 6.4 If the **TMO**, having considered a **Management Complaint** in accordance with the **Management Complaints Policy and Procedure**, concludes that a complaint is justified the **TMO** shall within 28 days of receiving the **Management Complaint**:
- a) if the **Management Complaint** is about the standard of service provided by the **TMO** in respect of the management or maintenance responsibilities delegated to the **TMO**:
 - i) take appropriate action to rectify the deficiency in the **TMO's** performance which gave rise to the **Management Complaint**, and
 - ii) in writing, notify the person who made the **Management Complaint** of the **TMO's** conclusions and the action the **TMO** will take to remedy the deficiency in its performance;
 - or,
 - b) if the **Management Complaint** is about the standard of service provided by the Council:
 - i) in writing, notify the Council that the **TMO** considers the **Management Complaint** justified and the action the **TMO** considers the Council should take to rectify the deficiency in the Council's performance, and
 - ii) in writing, notify the person who made the **Management Complaint** of the **TMO's** conclusions and the action the **TMO** expects the Council to take to remedy the deficiency in its performance.
- 6.5 If the Council considers that the conclusions the **TMO** has reached about a **Management Complaint** made about the Council's performance are incorrect the Council may, within 14 days of receiving the **TMO's** notification of its decision under clause 6.4 b), notify the person who made the **Management Complaint** that the Council disagrees with the **TMO's** conclusions and the reasons for the Council's disagreement. The Council shall also advise the person who made the **Management Complaint** of their right to raise the **Management Complaint** with their local ward councillor and/or with the Local Authority Ombudsman.
- 6.6 If the **TMO**, having considered a **Management Complaint** in accordance with the **Management Complaints Policy and Procedure**, concludes that a complaint is not justified the **TMO** shall, within 28 days of receiving the **Management Complaint**, notify the person who made the complaint and the Council of the **TMO's** conclusions and the reasons for them.

- 6.7 Once each year, within 3 months of the end of the **TMO's Financial Year**, the **TMO** shall provide the Council with a written report which shows:
- a) the number and nature of all **Management Complaints** received during the preceding 12 months;
 - b) in respect of each **Management Complaint**:
 - i) the conclusions the **TMO** reached having investigated the **Complaint**, and
 - ii) the action taken, if any, to rectify the cause for the **Management Complaint** and the time taken to do so.
- 6.8 If a **Management Complaint** is made to the Local Authority Ombudsman about the performance of the **TMO** as manager of the **Property**, the **TMO** shall provide the Council with the assistance and information the Council may reasonably require in dealing with the Local Authority Ombudsman's investigations.

CHAPTER 7

APPENDIX 1

Management Complaints Policy and Procedure

CHECKLIST

The contents of this Appendix shall include the following checklist of items in bold type. Examples listed underneath are for guidance only and do not form part of the checklist.



Set out the intentions of this policy

For example:

- *who is eligible to complain*
- *the type of complaints covered under this policy*
- *any complaints considered to be outside the remit of this policy*
- *its link to other relevant policies and procedures*



Set out how complaints should be made

For example:

- *whether all complaints must be in writing*
- *what help is available to those who would like support in making a written complaint*
- *where complaints should be sent and to whom*



Set out the rights of the person making the complaint

For example:

- *confidentiality guarantees*
- *rights of representation*
- *rights to be accompanied during any investigation by friend, witness or advocate*
- *provide for the support of translators or interpreters at all stages as appropriate*



Set out how complaints will be investigated

For example:

- *who will investigate complaints and, if appropriate, how such individuals are chosen*
- *how checks will be made to ensure that complaint covered by this policy and relates to the standards of management and maintenance at the **Property***
- *that face to face interviews will be used wherever possible or sensible*
- *that those investigating will consider other relevant TMO policies and will use other evidence: police, medical, environmental health officers, surveyors reports etc*
- *procedures ensure those investigating refer to appropriate authorities, rather than endanger themselves or others*
- *what timetable must be met to ensure prompt investigation of all complaints and meet the timetable laid down in the management agreement*



Set out how decisions will be taken and communicated

For example:

- *how those investigating will report and to whom*
- *what reports should cover:*
 - *whether complaint upheld*
 - *what action should be taken by the TMO*
- *who approves recommendations*
- *any rights of appeal against decisions, the appeal body and the time limit for appeals*
- *what is reported to TMO while preserving any confidentiality commitments*



Set out record keeping and monitoring requirements

For example:

- *specifying how records of investigations are kept and who has access to them in accordance with the terms laid down in the management agreement*
- *specifying what monitoring of the use and effectiveness of this policy will be carried out*
- *specifying how frequently these arrangements will be reviewed and by whom*

ANNEX A

Comparator Area for the Purpose of Setting the

TMO's Key Performance Indicators

*(Drafting Note: this may be the same as the schedule of properties used for rent setting and the **ALLOWANCES** methodology, see Appendix 3 to chapter 3)*

CHAPTER 8

DEFINITION OF TERMS

1 Value and Meaning of Variable Terms

The Variable Terms which are in **BOLD CAPITALS** in the text of chapters 1 to 7 of this Agreement have the value given to them in this clause. For ease of reference they are listed in alphabetical order. The chapter and clause reference given with each term is the clause from which the meaning of each term comes. The meaning of each term is also given. Where Variable Terms appear in the singular in the text of this Agreement they shall also have the same meaning in the plural where the context demands the plural to be used (and vice versa).

1.1 **ALLOWANCES** (chapter 4, clause 1)

As at the **STARTING DATE** ..... per annum.

The annual sum of money due to the **TMO** for fulfilling the responsibilities delegated to the TMO in the Agreement calculated in the manner set out in chapter 4, clause 1.

1.2 **COLLECTIBLE STARTING DATE ARREARS** (chapter 3, clause 3, option B)

The **Starting Date Arrears** which the **TMO** ought to be able to collect, as calculated by the formula in chapter 3, clause 3.5.

1.3 **CONTRACT WORKS LIMIT** (chapter 6, clause 3, option A)

.....

The financial limit above which the **TMO** must let contracts of work to contractors from the **Council's Approved List**.

1.4 **COUNCIL'S OFFICES** (chapter 6, clause 9)

..... (address)

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

1.5 **FLOAT** (chapter 4, clause 3, option A)

.....

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

(Omit if chapter 4, clause 3, option B is used).

1.6 **LIAISON COMMITTEE REPRESENTATIVES** (chapter 6, clause 6, option B)

..... (number of representatives)

The persons nominated by the **TMO** to serve on the Liaison Committee.

1.7 **LIAISON OFFICER** (chapter 6, clause 5)

..... (name of Liaison Officer)

..... (Job Title of Liaison Officer)

..... (address and telephone number of Liaison Officer)

The officer from the Council who is nominated by the Council to be the day to day point of contact between the Council and the **TMO**.

1.8 **NOMINATED BANK** (chapter 4, clause 12)

..... (name of Bank)

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

1.9 **STARTING DATE** (chapter 1, clause 5)

..... (date on which Agreement begins)

The date from which the Management Agreement starts.

1.10 **TMO** (Title Page)

The tenant management organisation which is a party to the agreement.

1.11 **TMO LIAISON OFFICER** (chapter 6, clause 5)

..... (name)

..... (office/staff appointment held)

..... (address)

..... (contact tel number)


The member of the **TMO's** Committee of Management or staff nominated by the **TMO** to be the Council's first point of contact on day to day matters concerning the operation of this Agreement.

1.12 **TMO'S REGISTERED OFFICE** (chapter 6, clause 9)

.....(address)

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

1.13 **TOTAL RENT** (chapter 3, clause 6, option B)

A figure representing the rent which the Council would charge if managing the **Property**, less the amount the Council would spend in managing the **Property** which, as at the **STARTING DATE**, equals ..... per week/fortnight/month/quarter.

1.14 **VOIDS PERCENTAGE** (chapter 3, clause 12)

.....%

The percentage of the total amount of money collectable by the **TMO** on behalf of the Council allowed for rent losses from dwellings which remain vacant while re-letting occurs (*and bad debts from rent and service charge arrears which the **TMO** is unable to recover).

** drafting note: omit section of definition in brackets if chapter 3, clause 13, options A or B are used.*

2 **Meaning of Defined Terms**

The Defined Terms which appear in **Bold Letters** in the text of each chapter of this agreement have the meaning given to them in the text but are repeated here for ease of reference. Where Defined Terms appear in the singular in the text of this Agreement they shall also have the same meaning in the plural where the context demands the plural to be used (and vice versa). Certain words used frequently throughout the Agreement have been defined at clause 15 of Chapter 1 and are not in bold lettering

2.1 **The Accounts** chapter 4, clause 4 (option B)

The bank accounts opened by the **TMO**.

- 2.2 **Aggrieved Person** chapter 5, clause 15 (option B) |
A lawful resident in the Property who is in dispute with another resident in the **Property**.
- 2.3 **Annual Accounts** chapter 4, clause 9 (option B) |
The accounts and balance sheet produced by the **TMO** each year within 3 months of the end of the **TMO's Financial Year**.
- 2.4 **Application to Exchange** chapter 5, clause 8 |
An application from a tenant in the **Property** who wishes to exercise the Right to Exchange under the rights of secure tenants in section 92 of the Housing Act 1985.
- 2.5 **Approved Landlord** chapter 6, clause 13 |
Any person or organisation which has become or is considering applying to become an approved landlord under the terms of section 94 of the Housing Act 1988.
- 2.6 **Approved Person** chapter 1, clause 17 |
A person, approved by the Secretary of State under the **Regulations**, to certify the competence of the **TMO** to take on the obligations of this Agreement and any variations to this Agreement where the **TMO** wishes to take on additional obligations or increased responsibilities.
- 2.7 **Arrears Prevention and Control Procedure** chapter 3, clause 1 |
The written policy in Appendix 1 to chapter 3 agreed between the Council and the **TMO** which will be used for the prevention and control of **Rent** or **Service Charges** arrears and for managing cases of arrears.
- 2.8 **Assessed Bad Debt Provision** chapter 3, clause 13 |
The formula applied to the arrears of each tenant included in the **Starting Date Arrears**.
- 2.9 **Breach Notice** chapter 1, clause 18 |
Written notice from the Council to the **TMO** that the **TMO** is in breach of this Agreement because it is failing to carry out the tasks specified in the notice in accordance with the performance standards set out in the appendices to this Agreement.

- 2.10 **Breach of Tenancy** chapter 5, clause 15, option B
A breach of tenancy, lease or freehold covenant.
- 2.11 **Complaint** chapter 5, clause 15 (option B)
A written request from an **Aggrieved Person** to the **TMO** requesting the **TMO** to take action against a person with whom the **Aggrieved Person** is in dispute.
- 2.12 **Council's Approved List** chapter 6, clause 3 (option A)
The lists of contractors approved by the Council for carrying out works in excess of the **CONTRACT WORKS LIMIT**.
- 2.13 **Council's Key Performance Indicators** chapter 7, 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.
- 2.14 **Council's Performance Report** chapter 7, clause 3 (option A)
The annual performance report produced by the Council comparing its performance in managing the **Property** with the performance standards for the Council set out in the appendices to this Agreement.
- 2.15 **Council's Representatives** chapter 6, clause 6 (option B)
The nominated members and/or officers of the Councils who represent the Council on the Liaison Committee.
- 2.16 **Council's Services** chapter 2, clause 10
Services for the **Property** which the Council is responsible for providing.
- 2.17 **Equal Opportunities Policy and Procedures** chapter 1, clause 9
The **TMO's** statement of Equal Opportunities Policies and Procedures which forms Appendix 2 to chapter 1.
- 2.18 **Exchange Notice** chapter 5, clause 8 (option B)
Notice from the **TMO** to the Council that it intends to permit an exchange to proceed under the terms of the Exchanges Policy.
- 2.19 **Exchanges Policy** chapter 5, clause 8

The policy in Appendix 5 to chapter 4 under which **Applications to Exchange** will be considered.

2.20 **Failure Notice** chapter 1, clause 18

Written notice from the **TMO** to the Council that the Council is failing to fulfil its retained responsibilities as specified in the **Failure Notice**.

2.21 **Final Repair Notice** chapter 2, clause 3

Written notice from the Council to the **TMO** or from the **TMO** to the Council notifying that a repair previously referred to in a **Repair Notice** remains outstanding.

2.22 **Former Tenant Arrears** chapter 3, clause 4 (option B)

The total amount of rent arrear debts owed to the Council by former tenants at the **STARTING DATE**.

2.23 **Financial Procedures** chapter 4, clause 3

The written statement of the **TMO's** regulations for authorising and controlling expenditure which forms Appendix 2, to chapter 4.

2.24 **Financial Report** chapter 4, clause 9 (option A)

The written statement of account prepared by the Council showing costs in comparison with the **ALLOWANCES**.

2.25 **Financial Year** chapter 4, clause 6

The **TMO's** financial year of 1 April to 31 March each year.

2.26 **Harassment Complaint** chapter 5, clause 16 (option B)

A complaint from a resident in the **Property** that they are the victim of harassment.

2.27 **Harassed Person** chapter 5, clause 16 (option B)

A person who has made a **Harassment Complaint**.

2.28 **Harassment Policy** chapter 5, clause 16 (option B).

The policy and procedure set out in Appendix 8 to chapter 5 with which the **TMO** is to comply in dealing with cases of harassment.

2.29 **Improvement Notice** chapter 2, clause 11

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 their lease.

2.30 **Improvements Policy** chapter 2, clause 11 (option C)

The written policy in Appendix 3 to chapter 2 approved by the Council which sets out the arrangements within which the **TMO** has delegated authority to consider and decide whether or not to grant consent to improvements proposed in **Improvement Notices**.

2.31 **Insurance Repairs** chapter 2, clause 8

Repairs to the **Property** arising from events which 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 leaking pipes).

2.32 **Leaseholders Notice** chapter 3, clause 10

A notice served on a leaseholder under the provisions of section 20 of the Landlord and Tenant Act 1985 notifying the leaseholder of the intention to carry out qualifying works which will form part of the **Service Charge**.

2.33 **Liaison Committee** chapter 6, clause 6 (option B)

The Joint **TMO** Liaison Committee established by the Council at which matters of concern to tenant management organisation may be discussed and on which the **TMO** is represented by its **Liaison Committee Representatives**.

2.34 **List of Council Officers** chapter 6, clause 4

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

2.35 **Major Works** chapter 2, clause 4

Cyclical redecoration, major repairs or improvements to the **Property**.

2.36 **Major Works Account** chapter 4, clause 4 (option B)

A bank account in the joint names of the Council and the **TMO** in which that part of the **ALLOWANCES** paid in advance to fund **Major Works** is held until required to meet the cost of **Major Works**.

2.37 **Major Works Fund** chapter 4, clause 8 (option B)

The fund set up by the **TMO** to meet the expected costs of fulfilling the cyclical repair obligations delegated to the **TMO** under this Agreement.

2.38 **Management Complaint** chapter 7, clause 6

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

2.39 **Management Complaint Policy** chapter 7, clause 6

The written policy in Appendix 1 to chapter 7 which sets out the arrangements for dealing with **Management Complaints**.

2.40 **Modular Management Agreement** chapter 1, clause 4

The approved form of management agreement required by the **Right to Manage** Regulations.

2.41 **Monitoring Report** chapter 7, clause 5

The report prepared by the Council following a performance monitoring visit to the **TMO**.

2.42 **Net Rent** chapter 3, clause 11 (option B)

The net amount of **Rent** and **Service Charges** collected by the **TMO** to be paid over to the Council at the end of each quarter, as shown in the rent demand sent to the **TMO** by the Council.

2.43 **Nominations Procedure** chapter 5, clause 2, options B&C

The policy, procedures and timescales for nominations agreed between the Council and the **TMO**.

2.44 **Notice of Dispute** chapter 6, clause 16

A written notice served either by the Council on the **TMO** or by the **TMO** on the Council stating a grievance as to the working of this Agreement and the action needed in order to resolve the dispute.

2.45 **Notice of Tenancy Breach** chapter 5, clause 5 (option A)

Written notice served by the **TMO** on the Council requesting the Council to take action for breach of tenancy, lease, or freehold covenant (other than on the ground of arrears of rent or service charge).

2.46 **Priority Allocations Scheme** chapter 5, clause 1

The arrangements set out in Appendix 2 to chapter 4 for the nomination, consideration and selection of applicants to be offered tenancies to vacant rented dwellings in the **Property**.

2.47 **Property** title page

The housing and other land described in Appendix 1 to chapter 1.

2.48 **Qualifying Repairs** chapter 2, clause 12

Repairs which secure tenants have the right to require to be carried out under the **Right to Repair Regulations**.

2.49 **Regulations** title page

The Housing (Right to Manage) Regulations 1994.

2.50 **Rents** chapter 3, clause 1

The rents due from tenants (including any charges for the provision of services).

2.51 **Repair Notice** chapter 2, clause 3

Written notice from the **TMO** to the Council that the Council is in breach of a repair obligation retained by the Council or written notice from the Council to the TMO that the TMO is in breach of a repair obligation delegated to the TMO.

2.52 **Reserve Fund** chapter 4, clause 8 (option B)

The fund set up by the **TMO** to meet the costs of fulfilling the TMO's responsibilities under this Agreement which costs cannot be met from the **ALLOWANCES** for the current financial year.

2.53 **Right to Buy** chapter 1, clause 17

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

2.54 **Right to Enfranchise** chapter 1, clause 17

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

2.55 **Right to Repair Claim** chapter 2, clause 12

A claim made under the **Right to Repair Regulations**.

- 2.56 **Right to Repair Regulations** chapter 2, clause 12 |
The Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994.
- 2.57 **Claim to the Right of Succession** chapter 5, clause 12 |
A claim that a person is qualified to succeed to the tenancy of a dwelling in the **Property** under sections 87 to 90 of the Housing Act 1985.
- 2.58 **Right of Succession Notice** chapter 5, clause 12 (option B) |
A notice from the **TMO** to the Council informing the Council that the **TMO** intends to accept a **Claim to the Right of Succession**.
- 2.59 **Right of Succession Policy** chapter 5, clause 12 |
The policy under which any **Claim to the Right of Succession** will be considered.
- 2.60 **Service Charges** chapter 3, clause 1 |
The amount payable by leaseholders and freeholders for services provided by the Council or the **TMO**.
- 2.61 **Services Notice** chapter 3, clause 10 |
A notice served on the Council by the **TMO** (option A) or the **TMO** by the Council (option B) notifying the intention to carry out works which require a **Leaseholders Notice** to be served on leaseholders.
- 2.62 **Starting Date Arrears** chapter 3, clause 3 |
The statement from the Council to the **TMO** of the total arrears of **Rent** as at the **STARTING DATE** of tenants from whom the **TMO** is to collect **Rent**.
- 2.63 **Statutory Duty Nomination** chapter 5, clause 2 (options B and C) |
A notice from the Council to the **TMO** requiring the **TMO** to consider an urgent nomination of a prospective tenant whom the Council has a statutory duty to house.
- 2.64 **Sub-Letting Policy** chapter 5, clause 10 |
The policy in Appendix 6 to chapter 5 under which applications from tenants to sub-let will be considered.
- 2.65 **Surplus Fund** chapter 4, clause 9 |

The fund set up to show the operating surplus of the **TMO**, accumulated from year one year to the next, and shown either on the Financial Report prepared by the Council (if clause 9, option A is used) or on the TMO's balance sheet (if clause 9, option B is used).

2.66 **Tenancy Agreement** chapter 5, clause 3 (options B and C)

The agreement setting out the terms and conditions of tenancy for letting dwellings in the **Property**, a copy of which forms Annex A to chapter 5.

2.67 **Tenancy Notice** chapter 5, clause 3 (option B)

Written notice served by the **TMO** on the Council requesting the Council to grant a tenancy to an applicant or applicants selected by the **TMO** in accordance with the **Priority Allocations Scheme** to be granted the tenancy of a vacant dwelling in the Property.

2.68 **Tenancy Refusal Notice** chapter 5, clause 3 (option B)

A notice served by the Council on the **TMO** in response to a **Tenancy Notice** informing the **TMO** that the Council has reasons for not granting the tenancy to the person the **TMO** has selected for a vacancy and requiring the **TMO** to reconsider its selection decision.

2.69 **Tenancy Variation Notice** chapter 5, clause 4 (options A, B C)

Option A: Notice served by the Council on the **TMO** proposing to vary the terms of the **Tenancy Agreement**.

Option B: Notice served by the **TMO** on the Council or by the Council on the **TMO** proposing to vary the terms of the **Tenancy Agreement**.

Option C: Notice served by the **TMO** on the Council proposing to vary the terms of the **Tenancy Agreement**.

2.70 **Tenants' Choice** chapter 1, clause 17

The right of tenants to determine whether an Approved Landlord should acquire dwellings in the **Property** under the provisions of Part IV of the Housing Act 1988.

2.71 **TMO's Approved List** chapter 6, clause 3

The list of contractors which are approved to enter into contracts with the **TMO**

- 2.72 **TMO's Key Performance Indicators** chapter 7, clause 1 |
- The performance indicators set up in consultation with the Council to measure the standard of the **TMO's** performance of its obligations under this Agreement.
- 2.73 **TMO's Performance Report** chapter 7, clause 3 |
- The report published annually by the **TMO** showing the **TMO's** actual performance during the year in comparison with the performance standards for the **TMO** set out in the appendices to this Agreement.
- 2.74 **TMO's Services** chapter 2, clause 9 |
- The services provided by the **TMO** to dwellings in the **Property**.
- 2.75 **Transfers Policy** chapter 5, clause 9 |
- Option A:** The policy in Annex C to chapter 5 under which applications from tenants to transfer to other dwellings owned by the Council will be considered.
- Option B:** The policy in Appendix 4 to chapter 5 under which the **TMO** has delegated authority to consider applications from tenants to transfer to other dwellings in the **Property**.
- 2.76 **Void Losses** chapter 3, clause 12 (option B) |
- Option B:** Loss of income due from dwellings in the **Property** which remain vacant.
- 2.77 **Warning Notice** chapter 1, clause 18 |
- Written notice from the Council to the **TMO** warning the **TMO** that unless a breach of this Agreement is remedied within 7 days (a breach which has already been notified in a **Breach Notice**), the **TMO's** responsibility for the task or tasks specified in the notices will be ended.

Modular Management Agreement
for Tenant Management Organisations